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Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences

Note by the Secretariat

The Secretariat has the honour to transmit the report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, prepared pursuant to Human Rights Council resolution 24/3. In the report, the Special Rapporteur investigates the issue of debt bondage as a key form of contemporary slavery across the world. She outlines the legal definition of debt bondage, before discussing trends in prevalence within different regions. She then goes on to discuss the key drivers of debt bondage and challenges in eradicating it. Finally, the Special Rapporteur outlines her vision for an integrated, human rights-based approach to the full eradication and prevention of debt bondage and develops recommendations for Member States on the implementation of such an approach.

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I. Introduction

1. The present report is submitted by the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Urmila Bhoola, pursuant to Human Rights Council resolution 24/3.

2. Since her presentation to the Human Rights Council at its thirtieth session, in September 2015, the Special Rapporteur has made country visits to Nigeria and El Salvador. The visit to Nigeria was made in conjunction with the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the sale of children, child prostitution and child pornography, and had the specific aim of assessing efforts made by the Government to assist in rehabilitating and reintegrating women and children who had escaped or been liberated from Boko Haram captivity. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health presented the report summarizing the findings of that visit (A/HRC/32/32/Add.2) to the Human Rights Council at its thirty-second session. The Special Rapporteur on contemporary forms of slavery, including its causes and consequences, also visited El Salvador to investigate the prevalence of contemporary slavery there and efforts made by the Government to prevent and eradicate the phenomenon. The report summarizing the findings of that visit (A/HRC/33/46/Add.1) is issued as an addendum.

3. In addition to undertaking the above-mentioned country visits, the Special Rapporteur has participated in a wide range of international conferences and initiatives relating to the prevention and eradication of contemporary forms of slavery. For example, she attended the Global Child Forum on Southern Africa, in September 2015; a United Nations Office on Drugs and Crime workshop, in November 2015 in Dakar; and the International Day for the Abolition of Slavery, in December 2014 at United Nations Headquarters. Furthermore, on 26 and 27 November 2015, the Special Rapporteur participated in the first African Girls' Summit on Ending Child Marriage in Africa, together with the Special Rapporteur on violence against women, its causes and consequences. During that event, she took part in panel discussions and plenary sessions, as well as in a meeting that brought together a number of non-governmental organizations and over 50 young girls who had been subjected to forced marriage. The Special Rapporteur was also appointed a partner of the International Labour Organization's 50 for Freedom campaign to promote ratification of the Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29) and participated in a number of advocacy activities related to the campaign in South Africa and Zambia, as well as in Geneva. She also took part in a United Nations University, Government of Liechtenstein and Freedom Fund campaign to increase criminal penalties and access to justice in the area of contemporary slavery.

4. In order to produce the present report on global trends in relation to debt bondage, the Special Rapporteur prepared a questionnaire and circulated it to Member States and other stakeholders. Analysis of the questionnaires, as well as desk-based research, informed the report. Additional information supporting the findings of the Special Rapporteur's report, as well as a full list of the sources consulted, is included in an annex that can be found on the web pages of the Special Rapporteur on contemporary forms of slavery, its causes and consequences.[1]

[1] See www.ohchr.org/EN/Issues/Slavery/SRSlavery/Pages/SRSlaveryIndex.aspx.

II. Legal characterization and definition of debt bondage

5. The practice of debt bondage, also known as bonded labour, is one of the four practices similar to slavery or forms of servitude that are addressed in the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, of 1956. Although servitude in international law has not been defined by an international instrument and the distinction between servitude and slavery has not been fully established, it has been considered that "servitude should be understood as human exploitation falling short of slavery. That is to say, such exploitation which does not manifest powers which would normally be associated with ownership, whether de jure or de facto".[2] Debt bondage is a type of servitude but can also be characterized as slavery if characteristics denoting ownership are present. Furthermore, debt bondage can also be classified as forced labour under the International Labour Organization (ILO) Forced Labour Convention, 1930 (No. 29). That Convention establishes debt bondage as "work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". Although debt bondage is not included in the definition of forced labour, there is a general consensus that the two practices overlap.

6. People enter the status or condition of debt bondage when their labour, or the labour of a third party under their control, is demanded as repayment of a loan or of money given in advance, and the value of their labour is not applied towards the liquidation of the debt or the length of the service is not limited and/or the nature of the service is not defined. Consequently, bonded labourers are often trapped into working for very little remuneration, or in some cases none, to repay the loan or advance, even though the value of their labour exceeds that sum of money.

7. In situations of debt bondage, the power imbalance between the employer (or creditor) and the worker often increases the worker's vulnerability to further human rights abuses. Employers and creditors are reported to adjust interest rates, to make further deductions arbitrarily as penalties for perceived poor performance, and/or to charge high prices for basic goods or working tools resulting in an increase of the debt and the perpetuation of deeply exploitative situations. Furthermore, bonded labourers are often subjected to physical and psychological abuse, to abusive conditions of work, such as long working hours, to dangerous and unhealthy work, and to severe restrictions on their freedom of movement, including in relation to changing employment. Children in debt bondage can be particularly vulnerable to additional violations of their human rights, as they lack access to education as well as to opportunities to participate in cultural and recreational activities.

8. The definition of debt bondage in the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery is sufficiently broad to cover the situation of workers trapped in debt bondage in systemic, archaic, feudal systems of slave-labour exploitation, as well as that of migrant workers from developing countries who leave their countries accruing debt to cover the costs associated with recruitment. Debt bondage is closely related to a number of forms of exploitation, including forced labour, the abuse of migrant workers, trafficking, and the worst forms of child labour. It has been observed that debt bondage is an area in which the relationship between trafficking and forced labour practices is particularly strong. Debt is considered to be a key

[2] Jean Allain, "On the curious disappearance of human servitude from general international law", *Journal of the History of International Law*, vol. 11 (2009), p. 304.

source of vulnerability to trafficking and is one of the mechanisms used to force victims to work in exploitative or abusive conditions.

III. Trends in the prevalence of debt bondage

A. Global

9. Debt bondage occurs worldwide and is not confined to any one country or region and it occurs across various sectors of the economy. A global trend can be seen whereby vulnerable people, including those belonging to minority groups, indigenous people, women, children, people determined as being of low caste, and migrant workers, are disproportionately impacted by debt bondage. As will be discussed below, many victims of debt bondage face multiple and intersecting sources of discrimination which make them vulnerable to exploitation and abuse.

10. ILO estimated in 2012 that 20.9 million people worldwide were victims of forced labour. These figures refer to all forms of forced labour, however given the close interrelationship with debt bondage, the figures offer some insight into debt bondage prevalence trends globally. The Asia-Pacific region accounts for the highest absolute number of victims of forced labour: 11.7 million, or 56 per cent of the global total. The second-highest number is in Africa, with 3.7 million (18 per cent), followed by Latin America and the Caribbean, with 1.8 million (9 per cent). Developed economies and the European Union account for 1.5 million victims of forced labour (7 per cent), while the non-EU countries of Central, South-East and Eastern Europe and the countries of the Commonwealth of Independent States have 1.6 million (7 per cent). In the Middle East, there are an estimated 600,000 victims (3 per cent). ILO has noted that the average period of time that victims spend in forced labour is approximately 18 months, with significant variation according to the forms of forced labour and across regions. The ILO data also illustrates that forced labour affects international migrants, internally displaced persons and people in their home countries. ILO estimates that there are 9.1 million victims (44 per cent) who have moved either internally or internationally, and 11.8 million (56 per cent) who are subjected to forced labour in their place of origin or residence.[3]

B. Regional

Africa

11. In Africa, debt bondage has been reported in sectors such as mining and agriculture, particularly in countries that are members of the Southern African Development Community, such as the Democratic Republic of the Congo, Malawi, Zambia and Zimbabwe.

12. The Democratic Republic of the Congo, Zambia and Zimbabwe have been identified as being home to adults and children who are subjected to debt bondage or trafficking while working in the mining sector.[4] Forced labour in the mining sector has been reported to

[3] International Labour Organization, *ILO Global Estimate of Forced Labour: Results and Methodology* (2012), pp. 13, 16 and 17. Available from www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_182004.pdf

[4] ILO, "Draft report on forced labour and human trafficking in the Southern African Development Community", paper prepared for the Subregional Conference on the Ratification and Implementation

involve multinational corporations that work on the extraction of precious metals or minerals. In the Kivu provinces in the east of the Democratic Republic of the Congo, debt bondage has been reported as one of the most common forms of contemporary slavery in mines. Workers contract debts to purchase food, supplies and working tools when they start working and continue to accrue debt in order to meet their basic needs. Most of the workers in debt bondage in North Kivu province come from other eastern provinces.[5]

13. It has also been reported that indigenous peoples in the Democratic Republic of the Congo are subjected to practices similar to slavery, including debt bondage, by the Bantu majority. Indigenous peoples are often trapped in debt bondage by Bantu "masters" who often sell them goods such as clothes, food and medicine at inflated prices and add exorbitant rates of interest if the goods are not paid for on time and who demand their work in return. It is also a common practice for the Bantu to create new debts in order to sustain the exploitation of bonded labourers. For example, it has been reported that they provide food to indigenous children and then add inflated costs to the debts of parents.[6]

14. In Malawi, situations of debt bondage are reported to be prevalent within the tobacco industry.[7] This sector is a major source of employment in Malawi and generates a significant amount of income for the country. Tobacco is traditionally grown by farmers who use waged workers, temporary workers and also tenants (workers to whom farmers provide land, food and housing and to whom they loan agricultural tools, the costs of which are deducted from future profits). The relationship between tenants and estate or farm owners has been reported to be largely exploitative, leading to a situation of debt bondage. The costs charged to tenants by the estate or farm owners exceed the amount received from tobacco sales due to manipulation of the debts. This leads to tenants, who are reportedly predominantly male, and their families, becoming trapped in situations of debt bondage. In 2013, the Special Rapporteur on the right to food estimated that 300,000 tobacco tenant families were living in extremely precarious situations in Malawi (see A/HRC/25/57/Add.1, para. 47). Since 1995, the Government has made several attempts to enact a specific law on tenancy labour but has yet not successfully developed such legislation. A tenancy labour bill was first drafted in 1995, and the latest version, from 2012, is still under debate.[8]

Asia

15. The practice of debt bondage in South Asia is reported to be widespread, particularly in India, Pakistan, Bangladesh and Nepal.[9] The existence of debt bondage has also been

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of the New ILO Protocol on Forced Labour, Lusaka, 17 and 18 November 2015, p. 38. Available from www.ilo.org/wcmsp5/groups/public/---africa/---ro-addis_ababa/documents/publication/wcms_425974.pdf.

[5] Free the Slaves, "The Congo report: slavery in conflict minerals", June 2011, pp. 11 and 14-16. Available from www.freetheslaves.net/wp-content/uploads/2015/03/The-Congo-Report-English.pdf.

[6] African Commission on Human and Peoples' Rights and the International Work Group for Indigenous Affairs, *Report of the African Commission's Working Group on Indigenous Populations/Communities: Research and Information Visit to the Democratic Republic of Congo, 9-25 August 2009*, p. 76. The report was adopted by the African Commission on Human and Peoples' Rights in 2011. Available from www.iwgia.org/iwgia_files_publications_files/0555_RDC-ENGELSK.pdf, and Anti-Slavery International, *Arrested Development: Discrimination and Slavery in the 21st Century* (2008), p. 24. Available from www.antislavery.org/includes/documents/cm_docs/2009/a/arresteddevelopment.pdf.

[7] Submission from the Eliminating Child Labour in Tobacco Growing Foundation, and submission from ILO, "A rapid assessment of the tobacco sector in Malawi" (2015), p. 9.

[8] ILO, "A rapid assessment of the tobacco sector in Malawi", pp. 25-29.

[9] Siddharth Kara, *Bonded Labor: Tackling the System of Slavery in South Asia* (New York, Columbia University Press, 2012), pp. xiii and 6.

reported in Afghanistan and Sri Lanka. However the majority of those in debt bondage are reported to be in India, Pakistan, Bangladesh and Nepal, despite the specific prohibition on such practices within the legal frameworks of these countries. Those who are trapped in debt bondage in South Asia are reportedly predominantly Dalits, persons of "low" caste, indigenous peoples[10] or members of other minority groups.[11]

16. In traditional forms of debt bondage in South Asia, patronage assumes an important role in the employer-employee relationship, in that the labour and the life of the debtor become collateral for the debt accrued. In some cases, such patronage perpetuates the cycle of debt from one generation to the next.[12] However, this generational debt bondage has decreased over the years and has been replaced by a more individualized temporary and/or seasonal form of bondage that is exclusively economic and lacks the dimension of patronage. This form of debt bondage, also known as "neo-bondage", is considered to involve the seasonal movement of migrant workers within and between countries. Such workers are recruited by intermediaries who usually demand the payment of an advance and the settlement of wages at the end of the contract in exchange for their intermediation. Neo-bondage is similar to traditional forms of bondage, in the sense that the men, women and children vulnerable to such practices mainly belong to marginalized communities.

17. Women and children often become trapped in situations of bonded labour because of debt contracted by an authoritative member of the family or as a result of the family's status. Children can also enter into bonded labour by inheriting a debt from a parent or other family member or they can be pledged individually to work in various sectors. The individual pledging of children has been identified as a phenomenon characterized by the recruitment of children through intermediaries who give their parents an advance. Such women and children are often vulnerable to physical and sexual abuse from employers. Cases of abduction of family members have been reported as a result of labourers seeking help to achieve release from bondage.[13] Indirect bondage is prevalent in sectors such as agriculture and the brick kiln industry, in which women and children are reportedly bonded through the male household head.[14] Women and children can also often be bonded in their own right, for example in domestic work, fish processing, silk farming, bangle production, or carpet making and weaving.

18. In India, debt bondage is geographically widespread and has been reported to be prevalent in sectors such as the brick kiln industry, stone quarries, mining, manufacturing of beedi (Indian cigarettes), carpet weaving, construction, agriculture, power looms and cotton handlooms, as well as fish processing.[15] Such practices are reported to be present in

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[10] In South Asia, this term includes those categorized as "tribals" (also known as *adivasi*) or, by Indian law, as "scheduled tribes".

[11] Anti-Slavery International, *Arrested Development: Discrimination and Slavery in the 21st Century*, pp. 5 and 6.

[12] Kevin Bales and Peter Robbins, "No one shall be held in slavery or servitude: a critical analysis of international slavery agreements and concepts of slavery", *Human Rights Review*, vol. 2 (January-March 2001), pp. 34 and 35; and
Shikha Sethia, "Bonded labourers", *India Exclusion Report 2013-14* (Books for Change, 2014), p. 206. Available from www.indianet.nl/pdf/IndiaExclusionReport2013-2014.pdf.

[13] Submission from Anti-Slavery International.

[14] ILO, *A Global Alliance Against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work 2005*, p. 32. Available from www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_081882.pdf.

[15] Supreme Court of India, Writ Petition (Civil) No. 3922 of 1985. Available from http://supremecourtofindia.nic.in/outtoday/3922.pdf; and

both the formal and the informal sectors. A survey conducted in 10 States in 1978 and 1979 by the Gandhi Peace Foundation and the National Labour Institute, which remains the most detailed survey on debt bondage, estimated the total number of bonded labourers in the agricultural sector at 2.62 million.[16] The majority of people who are in debt bondage are Dalits, of "low" caste, or indigenous peoples — also referred to as members of the scheduled castes and scheduled tribes.[17]

19. In the western and central parts of Tamil Nadu, a high number of adolescent girls reportedly work as bonded labourers under the *sumangali* scheme[18] in textile mills and garment factories, which is a major hub in the global knitwear sector that supplies international brands.[19] The majority of these workers are reported to belong to Dalit communities and are aged between 14 and 18 years.[20] Debt bondage is also reported in power loom workshops located in the Tiruppur region of Tamil Nadu, which produce woven cloth both for domestic manufacturers and for global suppliers. Those affected by debt bondage in this region are reported to include members of Dalit communities and other poor communities and to include both men and women. Furthermore, some non-agricultural industries in which debt bondage among children is reported to exist include carpet weaving, beedi making, silk production, silk sari production, the brick kilns and stone quarries.[21]

20. In Pakistan, debt bondage has been reported in industries such as the brick kilns, agriculture, fisheries, mining, carpet weaving and glass bangle production, among others.[22] Debt bondage is primarily concentrated in the provinces of Sindh and Punjab in agriculture, and in the brickmaking industry where often entire families are held in bondage. Landless sharecroppers (*haris*) in Sindh and brickmakers (*patheras*) in Punjab are the most affected by debt bondage. It has been reported that bonded labourers are often held in captivity by

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National Human Rights Commission, *Know Your Rights: Bonded Labour* (2010), p. 3. The Commission noted the following in 2010 regarding the sectors of the economy where bonded labour is prevalent: "High incidence of bonded labour in the agriculture sector is found in the States of Andhra Pradesh, Bihar, Haryana, Karnataka, Maharashtra, Orissa, Punjab, Tamil Nadu and Madhya Pradesh. In the non-agriculture sector, it is prevalent in brick kilns, stone quarries, beedi manufacturing, carpet weaving, match and fireworks industry, pottery, construction projects and bonded child labour in the sericulture processing industry. Migrant bonded labour involving States such as Bihar, Jharkhand, Chattisgarh, Tamil Nadu, Madhya Pradesh, Orissa, Rajasthan, present a heightened form of deprivation and exploitation often amounting to bonded labour system. Domestic workers, *jogins* and *devdasis* are subjected to exploitation in the form of bonded labour system".

[16] Ghandi Peace Foundation and National Labour Institute, *National Survey on the Incidence of Bonded Labour: Preliminary Report* (New Delhi, 1979). Cited in *India Exclusion Report 2013-14*, pp. 205 and 217 (footnote 8).

[17] Submission from Anti-Slavery International; submission from Prayas Centre for Labour Research and Action; submission from Jeevika Trust.

[18] Submission from Rights Education and Development Centre and Dalit Solidarity Network United Kingdom. The *sumangali* scheme is considered to be a form of modern slavery and bonded labour, which has been a particularly regular practice for the past 10 years in the textile industry of Tamil Nadu. Adolescent girls are recruited from their villages by brokers/agents, who pay an advance payment and then promise a considerable lump sum at the end of the contract. Often the wages received by the girls either at the end of the "contract" or paid on a weekly or monthly basis are used to cover expenses inside the work premises (e.g. food and housing costs).

[19] Submission from Anti-Slavery International.

[20] SOMO, *Captured by Cotton: Exploited Dalit Girls Produce Garments in India for European and US Markets* (May 2011), p. 14. Available from www.somo.nl/publications-en/Publication_3673.

[21] Shikha Sethia, "Bonded labourers", *India Exclusion Report 2013-14*, p. 208.

[22] Human Rights Commission of Pakistan, *State of Human Rights in 2011*, p. 204. Available from http://hrcp-web.org/hrcpweb/wp-content/pdf/AR2011-A.pdf.

armed guards or their family members are held as hostages, severely limiting the freedom of movement both of the bonded labourers and of their families.[23] The estimates reported by the Human Rights Commission of Pakistan pertaining to the period from 2011 to 2014 on the number of releases of bonded labourers ordered by courts in Sindh indicate that the largest number of releases occurred in the districts of Mirpur Khas, Sanghar and Umerkot. Furthermore, natural disasters such as the monsoon floods in 2010 have had a negative impact on the levels of debt bondage in agriculture and have increased migration-based bonded labour in numerous sectors such as construction and brickmaking.[24] Debt bondage in Pakistan is mainly found among minorities, such as non-Muslims (Hindus or Christians) or Muslims who have converted from Hinduism.[25]

21. In Nepal, bonded labour can be found in sectors such as agriculture, cattle rearing, domestic labour, the brick kiln industry, embroidered textiles and the stone-breaking industry.[26] A United Nations assessment carried out in 2011 suggested that 547,000 individuals in Nepal were in forced and bonded labour.[27] A large proportion of bonded labourers were reported to be involved in traditional forms of agricultural bonded labour, such as *haruwa-charuwa*,[28] *haliya*[29] or *kamaiya*.[30] The majority of *kamaiya* labourers were released following the declaration in 2000 that abolished the system and the enactment of the Bonded Labour (Prohibition) Act, 2058 (2002).[31] However, traces of the *kamaiya* system still remain, particularly where government action aimed at identification, release and rehabilitation has not reached those affected. In 2008 the Government abolished the *haliya* system and cancelled the debts of *haliya* bonded labourers, but in the absence of a comprehensive rehabilitation programme some reportedly remain trapped in debt bondage. A study conducted by ILO between 2008 and 2010 addressing forced labour of adults and children in agriculture, with a particular focus on the *haruwa-charuwa* system in central

[23] Human Rights Commission of Pakistan, *State of Human Rights in 2013*, p. 82. Available from http://hrcp-web.org/publication/book-genre/annual-reports/.

[24] Siddharth Kara, *Bonded Labor: Tackling the System of Slavery in South Asia* (New York, Columbia University Press, 2012), p. 71.

[25] Submission from Gulshan-e-John, submission from Green Rural Development Organization, and Aly Ercelawn and Muhammad Nauman, Pakistan Institute of Labour Education and Research. "Bonded labour in Pakistan: an overview", working paper (ILO, 2001), pp. 3-7.

[26] Walk Free Foundation, *Global Slavery Index 2013*, p. 50.

[27] United Nations country team in Nepal (2011), *A Country Analysis with a Human Face*, updated February 2013, p. 32. Available from http://un.org.np/reports/country-analysis-2011.

[28] Ibid. The *haruwa charuwa* labourer (tiller and cattle herder) is employed on a daily, weekly or monthly basis with various types of employment contract, oral or written. These contract agreements often provide for work in exchange for land or for a portion of the harvest, or for work against an annual payment or to pay the interest on a loan. Furthermore, the labourer's wife and children may also be obliged to work for the landowner, under pressures or threats such as being obliged to pay off their loans promptly, being excluded from sharecropping, being refused a loan in times of crisis, and violence.
Also: ILO, *Forced Labour of Adults and Children in the Agriculture Sector of Nepal* (ILO Country Office for Nepal, 2013), series No. 11, p. xiii. Available from https://www.dol.gov/ilab/reports/pdf/Nepal_FL%20of%20Adults%20&%20Children%20in%20the%20Agriculture%20S.pdf.

[29] United Nations country team in Nepal (2011). *Haliya* (agricultural labourers) are landless workers indebted to their landlords by custom and by debts that have not yet been repaid, sometimes over generations. Consequently, they receive no pay in return for the agricultural and domestic labour that they carry out. Some are allowed to migrate to India during the off-season to earn money to pay their debts. The system is prevalent in the Far Western Hill districts.

[30] The *kamaiya* system involved an agricultural labourer becoming bonded by receiving a loan from the landlord at the beginning of the work relationship.

[31] Submission from Anti-Slavery International.

and eastern Tarai and the *haliya* system in the far western hills, found that *harwaa-charwaa* and *haliya* households accounted for 72 per cent of adults in forced labour.[32] The ILO study also estimated that 33.5 per cent of the 89,545 working children aged from 5 to 17 were in forced labour, 62 per cent of whom were male and 38 per cent of whom were female. The vast majority of bonded labourers in Nepal are reported to be Dalits, persons of "low" caste, indigenous peoples or members of religious minorities.[33]

Latin America

22. In Latin America, debt bondage mainly affects marginalized communities, including those impacted by poverty, indigenous peoples, those living in rural areas and persons of African descent. Victims of debt bondage are often recruited to work within their own locality or transported to areas where there are new commercial developments. They work in a range of industries, including production of charcoal and pig iron, timber processing and agriculture.[34] Debt bondage has been reported in countries such as the Plurinational State of Bolivia, Guatemala and Peru, where there are high proportions of indigenous peoples.[35]

23. Most of the bonded labour documented in these countries is of short duration and thus resembles the "neo-bondage" described above.[36] Workers are usually bonded for a season; only in a few cases do they remain bonded for a longer period. The recruitment of workers is generally carried out through labour contractors or intermediaries who give workers advances and promise them decent remuneration and favourable labour conditions. Furthermore, the initial debts incurred by workers through the advances provided at the time of recruitment often continue to increase due to unexplained wage deductions or to credit used at stores run by employers to buy subsistence goods that are frequently sold at inflated prices. In some cases, the geographical isolation of labour sites and the fact that employers prevent any exchanges between workers and outside traders leaves workers with no alternatives. Children and women reportedly help their male family members in the performance of tasks or provide free domestic services to the landlord.

24. In Peru, debt bondage is reported to occur in the illegal logging and timber extraction industries, with mestizos (individuals of mixed colonial and indigenous descent) and indigenous peoples in the Peruvian Amazon commonly victimized.[37] Two forms of forced labour in logging activities have been identified in the Amazon. The first involves indigenous workers being contracted to perform activities in their own communities, whereas the second sees indigenous and mestizo workers being hired to work in logging camps owned by timber bosses. Enforcement of the arrangements between workers and

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[32] ILO, *Forced Labour of Adults and Children in the Agriculture Sector of Nepal* (ILO Country Office for Nepal, 2013), series No. 11, pp. 59 and 60.

[33] Submission from Anti-Slavery International.

[34] ILO, *The Cost of Coercion: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, International Labour Conference, ninety-eighth session (2009), report I (B), pp. 8 and 19. Available from www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_106268.pdf, and submission from ILO.

[35] See http://www.cepal.org/en/infografias/los-pueblos-indigenas-en-america-latina.

[36] Eduardo Bedoya Garland, Alvaro Bedoya Silva-Santisteban and Patrick Belser, "Debt bondage and ethnic discrimination in Latin America", in *Forced Labor: Coercion and Exploitation in the Private Economy*, Beate Andrees and Patrick Belser, eds. (Boulder, Colorado, Lynne Rienner Publishers, ILO, 2009), pp. 42 and 45.

[37] Eduardo Bedoya Garland and Alvaro Bedoya Silva-Santistebaa, "El trabajo forzoso en la extraccion de la madera en la Amazonia peruana", working paper (Geneva, ILO, 2005), p. ix; and Bhavna Sharma, "Contemporary forms of slavery in Peru" (Anti-Slavery International, 2006), p. 3.

employers is in some cases ensured through threats and abuse, including physical violence.[38]

25. In the Plurinational State of Bolivia, bonded labour has been reported among the indigenous Guaranis in the Chaco region and among indigenous workers and mestizos on sugar plantations, and in relation to the production of Brazil nuts in the northern Amazon.[39] The indigenous Guaranis in the Chaco region are mainly involved in farming and ranching, in activities such as the production of corn, beans, cassava, plantain and fruits, and fishing and hunting. It is estimated that a large number of indigenous Guarani families in the Bolivian Chaco are subjected to debt bondage and forced labour and are thus referred to as "captive communities".[40] Furthermore, every year during the sugar harvest, tens of thousands of indigenous workers and their families,[41] recruited by intermediaries or contractors through the *enganche* recruitment system,[42] migrate to Santa Cruz and Tarija.

26. In Paraguay, debt bondage has reportedly been observed among members of various indigenous ethnic groups on traditional low-technology cattle farms located in remote areas of the Chaco region.[43] Casual workers are hired for *changa* work — short-term work clearing fields or bringing in the harvest, and receive very low pay or no pay for their work after employers have deducted amounts from their wages corresponding to the items purchased on credit at the estate shop.[44] Permanent workers are employed as *plaveros* (ranch hands) to perform a variety of tasks, such as cutting wood or milking the cows, and in some cases due to the debts they have contracted are directly or indirectly held against their will. ILO estimated in 2005 that a total of 8,000 indigenous workers could be victims of debt bondage in Paraguay.[45]

27. In Brazil, the highest incidence of what is commonly referred to as "slave labour", which includes the practice of debt bondage,[46] is found in industries associated with the

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[38] Eduardo Bedoya Garland, Alvaro Bedoya Silva-Santisteban and Patrick Belser, "Debt bondage and ethnic discrimination in Latin America", in *Forced Labor: Coercion and Exploitation in the Private Economy*, p. 44.

[39] Ibid.

[40] Inter-American Commission on Human Rights, "Captive communities: situation of the Guarani indigenous people and contemporary forms of slavery in the Bolivian Chaco", 2009.

[41] Eduardo Bedoya Garland and Alvaro Bedoya Silva-Santisteban, "Enganche y servidumbre por deudas en Bolivia" (ILO, 2005), p. 1.

[42] Inter-American Commission on Human Rights, "Captive communities: situation of the Guarani indigenous people and contemporary forms of slavery in the Bolivian Chaco", 2009, p. 7.
"According to a study by the ILO, the *enganche* system leads to a situation of debt bondage and forced labour. To pay his debt, the farmer who receives an advance has no option other than to work in the place determined by the *enganchador* (intermediary or contractor). ... The farmer cannot repay that advance with money, nor can he look for another recruiter who will give him more money, nor is he in a position to seek other employment. ... The *enganche*, therefore, is a system of getting labour that entails the worker's loss of liberty and it takes place in the absence of a developed labour market".
Also: Eduardo Bedoya Garland and Alvaro Bedoya Silva-Santisteban, "Enganche y servidumbre por deudas en Bolivia", pp. 1 and 2.

[43] Submission from Paraguay.

[44] Eduardo Bedoya Garland and Alvaro Bedoya Silva-Santisteban, "Servidumbre por deudas y marginación en el Chaco de Paraguay" (ILO, 2005), p. ix.

[45] Ibid.

[46] Slave labour is defined in art. 149 of the Brazilian Penal Code as reducing someone to a condition analogous to that of a slave, namely subjecting a person to forced labour or to arduous working days, or subjecting such a person to degrading working conditions or restricting, in any manner whatsoever, his mobility by reason of a debt contracted in respect of the employer or a representative of that employer. See Nicola Philips and Leonardo Sakamoto, "The dynamics of adverse incorporation in

production of commodities such as live cattle, soybean, cotton, sugar and coffee.[47] Other products identified with slave labour include vegetable charcoal and ethanol. Some of the regions reported to have a high incidence of slave labour include the states of Pará, Mato Grosso, Maranhão, Tocantins and Bahia, which also have been identified as states with a high incidence of violence and deforestation for cattle ranching.[48] Labour intermediaries known as *gatos* usually recruit workers by offering them advance payments and free transport to the work site. Once they have arrived, the labourers, most of whom are males aged between 18 and 34, become indebted, as a result of items they buy on credit at the canteens run by the employer, and the charges for working tools, accommodation and transport.

C. Migrant workers and debt bondage

28. Debt bondage in the context of labour migration and trafficking is a trend that can be seen across a number of countries and sectors. Migrant workers often become trapped in situations of bondage by borrowing money at exorbitant interest rates to pay recruitment fees or by taking an advance payment from intermediaries to secure work in the country of destination. Once migrants arrive in the country of destination they are often forced to work in harsh conditions to pay back debt they have accrued. Furthermore, workers are commonly subjected to threats and physical abuse, and in some cases face severe restrictions to their freedom of movement. The vast majority of people trafficked to countries in North America, Europe and the Middle East and to other developed countries are migrant workers who are trafficked into a variety of jobs including domestic work, agricultural work, prostitution and factory work and are often controlled through debt bondage and other mechanisms.

29. In the Middle East, migrant workers represent a significant portion of the labour force in the Gulf Cooperation Council countries of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates, particularly in the private sector. The individual sponsorship system, known as the *kafalah* system, which ties the employment and residency of a worker to a specific employer, is considered to be an arrangement that creates dependency of the worker on the employer and encourages abuses, including debt bondage. The fees charged by recruitment agencies for travel arrangements, labour contracts and other services trap migrant workers into bondage in their home countries. Consequently, migrant workers are often indebted upon arrival in the country of destination. Furthermore, practices such as the confiscation of passports, the non-payment, underpayment or delayed payment of wages, and contract substitution are considered to contribute to debt bondage. Those who are most susceptible to debt bondage in these countries are Asians who work as migrant labourers and domestic servants.

30. Exploitation of migrant workers via debt bondage has also reportedly been seen in South-East Asia. In Thailand, migrant workers, primarily from neighbouring countries including Cambodia, the Lao People's Democratic Republic and Myanmar, are reported to have been subjected to deceptive recruitment practices that can lead to cases of debt

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global production networks, poverty, vulnerability and 'slave labour' in Brazil", Chronic Poverty Research Centre working paper No. 175 (2011), p. 6. Available at http://r4d.dfid.gov.uk/PDF/Outputs/ChronicPoverty_RC/WP175_Phillips-Sakamoto.pdf.

[47] Ibid., p. 12.

[48] Leonardo Sakamoto, "'Slave labour' in Brazil", in *Forced Labor: Coercion and Exploitation in the Private Economy*, Beate Andrees and Patrick Belser, eds. (Boulder, Colorado, Lynne Rienner Publishers, ILO, 2009), pp. 19 and 21.

bondage.[49] Workers are often lured to work on fishing boats free of charge and once they start working are charged for the costs of recruitment and the travel expenses, with high interest rates.[50]

IV. Examples of national measures designed to eradicate and prevent debt bondage

31. A number of different countries have taken measures, including the development of legislation, policies and programmes, to eradicate and prevent debt bondage and related forms of servitude. Examples of these are discussed below, and additional material is included in the annex.

A. Constitutional provisions relating to debt bondage

32. In South Asia, several countries have provisions in their national constitutions from which further enacted legislation on debt bondage flows directly. For example, article 23 of the Constitution of India prohibits trafficking in human beings, *begar* (debt bondage) and other similar forms of forced labour, as an enforceable right. Article 11 of the Constitution of Pakistan prohibits slavery and forced labour. Article 29 of the Constitution of Nepal prohibits debt bondage and other forms of forced labour and specifies that an employer contravening the prohibition must pay compensation. In Brazil, article 243 of the Constitution provides for the expropriation of rural or urban property in which the use of slave labour has been identified and its consignment to agrarian reform and social housing.[51]

B. Debt bondage legislation, policies and programmes

33. In South Asia, specific legislation on debt bondage and other relevant legislation to combat debt bondage has been enacted in India, Nepal and Pakistan. In India, the Bonded Labour System (Abolition) Act, 1976 abolishes the bonded labour system and discharges every bonded labourer from any obligation to render labour related to debts. The Act also prohibits the giving of advances to bonded labourers, obliges local governments to rehabilitate freed bonded labourers and imposes a penalty on perpetrators of up to 3 years' imprisonment and a fine of up to Rs. 2,000. The Act mandates the establishment of vigilance committees at the district and subdivisional level, with a duty to provide for the "economic and social rehabilitation" of bonded labourers. In addition, the Child Labour (Prohibition and Regulation) Act, 1986 prohibits the participation of children under 14 years of age in certain kinds of hazardous employment and regulates the conditions of work in other kinds of employment. Section 374 of the Indian Penal Code punishes compelling any person to labour against the will of that person, and section 370 prohibits trafficking in persons for the purpose of exploitation, which includes "physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs". The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 prohibits forced or bonded labour of a member of a scheduled caste or tribe.

[49] Verite, "Recruitment practices and migrant labour conditions in Nestle's Thai shrimp supply chain: an examination of forced labour and other human rights risks endemic to the Thai seafood sector", p. 13.

[50] Submission from Human Rights and Development Foundation.

[51] ILO, "Application of international labour standards 2016 (I): report of the Committee of Experts on the Application of Conventions and Recommendations", p. 179.

34. Also in India, the Centrally Sponsored Scheme for Rehabilitation of Bonded Labourers, introduced in 1978, establishes that the cost of rehabilitation grants is to be assumed on an equal basis by the central Government and the states, and provides Rs. 20,000 in compensation per labourer.

35. In Nepal, the Bonded Labour (Prohibition) Act, 2058 (2002) abolished bonded labour in the country.[52] The 2002 Act makes null and void all the debts contracted by persons in debt bondage and requires the establishment of freed bonded labourer rehabilitation and monitoring committees in a number of districts. The 2002 Act provides for penalties and fines for perpetrators. In 2010, the Ministry of Land Reform and Management presented a *haliya* system (prohibition) bill, setting out the rights of freed *haliya*, and establishing a rehabilitation fund, a case litigation and appeal process, and provision for punishment. However, the bill has not yet passed into law. In May 2011, the Government issued the "Freed *haliya* rehabilitation and monitoring guidelines", which mandated district-level task forces to update the information on freed *haliya* and to distribute identification cards to them within six months of their being identified.

36. In Pakistan, the Bonded Labour System (Abolition) Act, 1992 abolished bonded labour throughout the country. The Act prohibits any loan or advance under the bonded labour system, or compelling a person to render any form of forced labour. It also extinguishes all obligations to repay any bonded debt and provides for 2 to 5 years' imprisonment for perpetrators and/or the imposition of a fine of PRs. 50,000. The law mandates provincial governments to set up district vigilance committees, for implementation of the law and the rehabilitation of bonded labourers. The Bonded Labour System (Abolition) Rules, 1995 established the responsibility of various implementing agencies and mandated the setting up of a fund for the rehabilitation of freed bonded labourers. In 2001, the Government developed the National Policy and Plan of Action for the Abolition of Bonded Labour, in which the Government committed itself to eradicating bonded labour and developing the rehabilitation fund.[53]

37. In Mauritania, Act No. 2015-031 of 10 September 2015 criminalizes slavery and punishes slavery-like practices including debt bondage.[54] The Act provides for the possibility of third parties (those who have benefited from legal personality for at least five years) taking legal action and being a party in the proceedings (section 23).

38. In Germany, subjecting a person under the age of 21 to debt bondage is penalized under the Criminal Code (section 233 (1)) with a term of imprisonment of between 6 months and 10 years.[55] In Australia, the offence of debt bondage is penalized by 4 years' imprisonment, under section 271.8 of the Criminal Code.[56] Furthermore, the Government of Australia has adopted the National Action Plan to Combat Human Trafficking and Slavery 2015-2019, which includes actions to combat debt bondage. Other measures include the setting up in 2015 of Task Force Cadena to tackle serious incidents of illegal work, visa fraud and worker exploitation, with a focus on industries such as food production and agriculture, and the establishment of the Ministerial Working Group Protecting Vulnerable Visa Holders to consider policy options to protect vulnerable foreign workers in Australia.

[52] Submission from Anti-Slavery International.

[53] Pakistan Institute of Labour Education and Research, "Effectiveness of interventions for the release and rehabilitation of bonded labourers in Pakistan", p. 11.

[54] ILO, "Application of international labour standards 2016 (I): report of the Committee of Experts on the Application of Conventions and Recommendations", p. 260.

[55] Submission from Germany.

[56] Submission from Australia.

V. Key drivers of debt bondage and challenges in relation to its full eradication

A. Drivers

Poverty, lack of decent work and barriers to education

39. Poverty is a key driver of debt bondage across the world. Bonded labourers are frequently reported to live in situations of poverty that are sustained through generations. They often do not own any assets and lack access to land, education, health care and/or decent work opportunities. The majority are trapped in debt bondage because the only source of credit they can obtain is from their employer or recruiter. Life events have been identified as triggering the need for the loans that can lead to debt bondage; these may include illness or accident, marriage, and death in the family. Loans are also commonly needed for subsistence, and for investments such as home improvements.

40. People in debt bondage tend to have experienced a low level of access to education, which frequently results in illiteracy and innumeracy. This leads to a lack of alternative employment options and makes them vulnerable to exploitation from their employers. Illiteracy and innumeracy allow employers or recruiters to manipulate loans, interest rates and wages. Poor remuneration in previous employment is considered to be a major cause of debt bondage, as workers are forced to take loans or advances to cover basic subsistence needs.

Discrimination

41. Bonded labourers commonly belong to minority groups vulnerable to discrimination, such as certain racial groups, women, indigenous people, people of "low" caste and migrant workers. The discrimination suffered by these groups frequently prevents them from accessing education, health care, clean water and credit. Furthermore, demands from bonded labourers for fair treatment, or their resistance to exploitation, often cause them to face social sanctions and boycotts that further restrict their possibility of overcoming discrimination or of leaving the situation of bondage. The discrimination faced by bonded labourers comes in some cases not only from society at large but also from other members of the same minority groups.

42. Gender inequalities and discrimination make women vulnerable to bondage, as they are often excluded from the labour market and consequently are involved in unskilled and poorly paid jobs. Furthermore, discrimination against children belonging to minority groups is a factor that limits their full access to education and thus increases their vulnerability to exploitation. Many bonded labourers, including women and children, face multiple and intersecting forms of discrimination, which significantly increases their vulnerability to debt bondage and at the same time limits their opportunities for escaping such abuse.

Precarious labour migration

43. Precarious labour migration has been identified as a driver of debt bondage. Migrant workers are also often vulnerable to exploitation because of barriers they face in accessing the protections provided to nationals of the country to which they have migrated and because of generalized social hostility towards foreigners. The choices made by migrants about securing employment abroad are often based on misinformation and false promises concerning conditions of employment in destination countries. A lack of financial literacy can lead to a poor understanding of the loans taken out to pay fees, and a lack of alternatives in their home countries can incentivize migrants to take out loans on which extortionate rates of interest are charged. Furthermore, a lack of effective regulation of the

recruitment sector, unethical practices by unscrupulous recruiters, late payment or the withholding of payment by employers, and exorbitant charges for services can worsen situations of debt bondage.

B. Main challenges in eradicating debt bondage

44. Despite the efforts of various countries to eradicate and prevent debt bondage, there are still challenges in implementing adequate measures in this regard, including:

(a) The lack of adequate enforcement of legislation on debt bondage and on workers' rights, and of other relevant legislation for the eradication of debt bondage, and in some countries the non-existence of specific legislation on debt bondage;

(b) The lack of implementation or absence of legal measures that could prevent reprisals against victims of debt bondage when the criminal law is being used to punish perpetrators (e.g. a summary procedure in cases of debt bondage), particularly when victims and perpetrators are part of the same community;

(c) The lack of regulatory frameworks and oversight in respect of recruitment agencies or brokers that impose excessive recruitment fees or provide advances to migrant workers leaving them indebted;

(d) The limited access to justice and to effective remedies, which is often linked to the discrimination that bonded labourers suffer. Members of minority groups frequently continue to encounter discrimination, harassment and violence when seeking to access the justice system;

(e) The ineffectiveness or non-existence of adequate mechanisms to identify bonded labourers, including the lack of ongoing identification programmes conducted in the formal and informal sectors and the lack of particular methods for identifying bonded labourers. Other challenges in this regard include the insufficient resources allocated for the purposes of identification; the non-proactive attitude by officials to seeking out and finding cases of debt bondage; the lack of data, which could be obtained through surveys to identify the number of persons in debt bondage and the sectors where it is the most prevalent; and the failure by the authorities to recognize new forms of debt bondage, such as seasonal debt bondage;

(f) Deficiencies in providing protection and assistance to promote the recovery and reintegration of bonded labourers, particularly as regards ensuring that bonded labourers get an alternative means of earning a living under decent working conditions that will prevent them from relapsing into bondage. Furthermore, challenges remain regarding their access to recovery and reintegration programmes, particularly due to the fact that persons in debt bondage often do not have legal documents and due to the lack of adequate measures to ensure that such documents are obtained promptly;

(g) The absence of measures to specifically target the factors that cause or facilitate debt bondage, such as poverty, illiteracy, lack of access to decent work, social exclusion and discrimination. Also, the absence of measures to address cultural and economic pressures in some countries (e.g. in relation to marriage) and to ensure access to education, health and social security;

(h) Corruption, which has reduced the effectiveness of the identification, release and recovery of bonded labourers in some countries where debt bondage is prevalent. In some cases, the authorities are influenced by pressure from employers who occupy powerful positions in the community or belong to social elites. In that context, when employers are prosecuted they may be charged with infringing more lenient laws rather than the laws on debt bondage.

VI. Developing an integrated, human rights-based approach to eradicating and preventing debt bondage

45. Debt bondage is a complex and multidimensional form of contemporary slavery that impacts on individuals across the world. In order to be effective in eradicating and preventing debt bondage, Governments must develop comprehensive and integrated programmes of action based upon international human rights standards, as well as on the views of those affected. Such approaches must be multifaceted and include legislative and policy measures that are effective in eradicating debt bondage and preventing such abuse, by decreasing individual vulnerability and further developing the legal and institutional framework. The vision of the Special Rapporteur for such an integrated, human rights-based approach is outlined below.

46. The enactment of laws that prohibit debt bondage and adequately punish perpetrators is essential as a first step towards the eradication and prevention of this phenomenon. Such laws need to be actively enforced, along with those that are relevant to the prevention and eradication of debt bondage, including those related to regulation of recruitment agencies, the right to organize and the payment of wages. The necessary resources must be allocated to assure full implementation of the laws at all levels of government. Effective administrative institutional structures and processes must be in place to implement legislation on debt bondage. As part of such implementation efforts, enforcement officials and other State officials should be sensitized and trained in regard to relevant laws on debt bondage and the rights of victims.

47. Alongside such legislation, Governments should take all possible steps to prevent and address discrimination, as a key preventative strategy against debt bondage. Anti-discrimination legislation should be in place, and programmes that reduce vulnerability to exploitation should be targeted to populations commonly affected by debt bondage. Within such efforts, specific attention should be paid to removing barriers to access to education among children from vulnerable groups. In addition, addressing gender inequalities in society at large will help to reduce the number of women in debt bondage. Ensuring that women are given the same opportunities as men and that they enjoy equal rights at work is a key step in preventing them from becoming trapped in situations of debt bondage.

48. The labour inspection system must be resourced and trained in order to ensure effective monitoring of the compliance with laws on debt bondage, as well as with other relevant labour laws, for example those on forced labour, child labour, social security, wages, working conditions, health and safety, unionization, collective bargaining and equality. To that purpose, the labour inspection system should be provided with the necessary resources to monitor both the formal and informal sectors. Regulation of the labour market should also ensure that the rights to freedom of association and of peaceful assembly, as well as the right to collective bargaining, are universally upheld.

49. Comprehensive national and/or regional surveys should be undertaken to identify those in bonded labour and should include disaggregated information on those affected, by age, gender, nationality, caste or ethnic group, and to identify the industries in which debt bondage is prevalent. The existence of detailed data is a necessary step for the development of effective policies, systems and practices.

50. There should be no time gap between identification of persons in debt bondage and their release on the one hand, and the start of the rehabilitation measures on the other. Effective rehabilitation and reintegration measures need to be in place to prevent relapse into debt bondage and need to be designed in consultation with released bonded labourers. Rehabilitation measures need to ensure a sustainable livelihood for freed bonded labourers, and access to rehabilitation needs to be provided. This requires the issuance of legal

documents such as identity cards and birth certificates, which will also enable them to access social security and other government-run services. Children who are identified as being in debt bondage must be ensured access to education in order to support their full rehabilitation.

51. Interventions to support the empowerment of adults who are in debt bondage or who are vulnerable to debt bondage are necessary, both for the individuals concerned and for subsequent generations. Initiatives that ensure that bonded labourers have access to land, such as land reform in rural areas, and fairer leasing arrangements; full, free and productive employment and skill training; and affordable credit could promote the empowerment of bonded labourers and prevent debt bondage. Furthermore, the implementation of projects that facilitate access to regulated credit schemes, both for entrepreneurial purposes and for personal needs, could prevent workers from becoming trapped in debt bondage.

52. In regard to migrant workers who are in debt bondage as a result of abusive recruitment practices, a comprehensive programme of initiatives needs to be implemented by States. This should include awareness-raising, training on safe migration, and capacity-building, for prospective migrants, officials from local and central government, and civil society organizations; the effective regulation of recruitment agencies and intermediaries; and regional and international cooperation on the issue.

VII. Conclusions and recommendations

A. Conclusions

53. **The practice of debt bondage is prevalent worldwide in numerous sectors of the economy and particularly affects people belonging to minority groups, including women, children, indigenous people, people of "low" caste and migrant workers. Poverty, the lack of economic alternatives, illiteracy and the discrimination that people from minority groups suffer leave them with no other option than to take a loan or advance from employers or recruiters to meet basic needs, in exchange for their work or the work of their families. People in debt bondage end up working for no wages or wages below the minimum in order to repay the debts contracted or advances received, even though the value of the work they carry out exceeds the amount of their debts. Furthermore, bonded labourers are often subjected to different forms of abuse, including long working hours, physical and psychological abuse, and violence. Debt bondage is prevalent in many countries, due to a failure by many Governments to implement effective legislation on debt bondage, including deficiencies in the areas of identification, release, rehabilitation, and the prosecution of offenders, and due to a lack of data on the prevalence of debt bondage, weak rule of law, social exclusion and discrimination.**

54. **Under the due diligence standard, States have an obligation to exercise a measure of care in preventing and responding to the acts of private individuals. More specifically, they have a duty to protect people in debt bondage by means of adequate procedures to identify them, to provide short-term and long-term rehabilitation that prevents revictimizations, to enact legislation on debt bondage and to ensure that victims have access to justice and remedies. Furthermore, States have an obligation to prevent debt bondage through prevention of discrimination, regulation of wages, enforcement of labour law and regulation of recruitment practices, and by protecting persons in debt bondage against violations in the context of business activities.**

55. **A comprehensive, human rights-based approach to tackling debt bondage must have at its centre the compliance of States with their obligations under international**

law and the empowerment of freed bonded labourers and people vulnerable to debt bondage. Recommendations on the implementation of such an approach are detailed below.

B. Recommendations to Member States

Institutional and legal framework

- Ratify all relevant international instruments prohibiting slavery and slavery-like practices and other relevant international instruments pertaining to the eradication of debt bondage, including the Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29). States should align their national legislation with these international standards, in order to adequately criminalize debt bondage and provide adequate penalties for violations.
- Ensure that debt bondage is prohibited as a specific crime within national legal frameworks with adequate penalties for violations. Debt bondage should be included as a stand-alone violation that is treated separately from related phenomena such as forced labour or trafficking.
- In addition, ensure that the relevant legislative provisions declare null and void all debt contracted during any period during which a person was held in debt bondage.
- Establish and/or update comprehensive national action plans for the eradication of contemporary forms of slavery including debt bondage. The national action plans should outline measures to prevent and eradicate debt bondage, and ensure the protection of persons released from debt bondage.
- Provide training and sensitize law enforcement and labour officials at the national and local levels on the identification of persons in debt bondage and on the implementation of legislation on debt bondage if it exists and other relevant labour laws to tackle debt bondage. States should ensure the enforcement of legislation on debt bondage and other relevant laws to tackle debt bondage, and should ensure that these apply to all workers and all sectors of the economy.
- Sensitize the competent authorities on the effective identification of victims of debt bondage, including by developing specific guidelines and procedures and implementing human rights-based training.
- Invest in the capacity and knowledge of the labour inspectorate in order to detect and tackle cases of debt bondage. Ensure that the inspectorate covers all sectors impacted by debt bondage, including those within the informal sector.
- Ensure that robust anti-discrimination legislation is in place to protect groups that can become vulnerable to debt bondage because of multiple and intersecting forms of discrimination.
- Ensure that legislation is in place that regulates the payment of wages, and that such provisions are in alignment with obligations under the ILO Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117).
- Poverty reduction, the right to education and access to decent work opportunities.
- In the context of implementation of the Sustainable Development Goals, continue and expand targeted poverty reduction programmes that reduce the vulnerability of the individual to debt bondage.

- Ensure basic social security guarantees in order to reduce vulnerability to debt bondage.
- Take all possible steps to ensure that all members of the population can fulfil their right to education.
- Ensure effective regulation of private sector organizations in line with the Guiding Principles on Business and Human Rights.
- Invest in programmes that facilitate people's access to decent work opportunities, in order to ensure that they have economic alternatives to debt bondage.
- Ensure full respect of the rights to freedom of association and of peaceful assembly, as well as the right to collective bargaining, to support decent work and the ability of bonded labourers to advocate for their rights.
- Prevention and elimination of discrimination.
- As stated above, ensure that legislation is in place to protect from discrimination those who are vulnerable to bonded labour in order to prevent situations of exploitation.
- Undertake public-awareness-raising campaigns to challenge stigma and prejudices towards groups vulnerable to debt bondage, and sensitize populations to the rights of such people.
- Implement human rights-based training on the prevention and elimination of all forms of discrimination across State institutions.
- Integrate provisions designed to prevent stigma and prejudice against populations vulnerable to debt bondage, within all educational curricula.
- Victims of debt bondage should be ensured equal access to justice and access to effective remedies. States should ensure that persons in debt bondage who seek to access the judicial system do not encounter discriminatory attitudes and/or policies which impede access to their rights under law.
- Remove any forms of discrimination that negatively impact on the rights of certain groups, including girls, indigenous peoples and migrant children, to an education.
- Protect migrant workers.
- As outlined above, invest in the development of economic alternatives to reduce the push factors that drive individuals into migration that can lead to exploitative labour.
- Develop a comprehensive system of regulation of recruitment practices in relation to migrant workers that includes the banning of recruitment fees and the issuing of licences to recruiters and other related intermediaries.
- Origin and destination countries should work together to ensure the effective monitoring of the situation of migrant workers and that adequate protection systems are in place.
- Identification, data collection, assistance and rehabilitation.
- Undertake national and/or regional surveys to identify victims of debt bondage; these should include disaggregated information on those affected, by age, gender, nationality, caste and ethnic group, as well as information about the industries in which debt bondage is prevalent. Such surveys should cover

remote areas and informal workplaces. Data collected from such surveys should be used as the basis for the development of effective legislation, policy and programmes.

- Within the design of such surveys, provisions should be included to provide immediate assistance to identified bonded labourers. The steps taken must ensure the safety of labourers and protect them from any threats or reprisals from employers.
- Put in place comprehensive programmes that allow identified bonded labourers to be able to access the support that they need to fulfil their right to rehabilitation.
- Ensure that bonded labourers are fully consulted about the development of assistance and rehabilitation programmes.
- As part of such efforts, issue identity cards to former bonded labourers to ensure that they can access social security assistance and Government services.
- When children are identified as bonded labourers, ensure that they are able to reaccess education and that specific provisions are in place to support their reintegration.
- Ensure that those who have been subjected to debt bondage are able to access decent work opportunities to support their rehabilitation.
- Access to justice and redress.
- Take all necessary effective measures to ensure appropriate and effective remedies for victims of debt bondage, as established under the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29).
- Train members of the judiciary on legal provisions relating to debt bondage and the rights of victims, in order to ensure the effective enforcement of legislation.
- Take all possible steps to establish effective rule of law, in particular by building the capacity of the judiciary to ensure that relevant laws are properly and consistently enforced.
- Develop victim protection mechanisms to protect former bonded labourers in the context of judicial proceedings.
- Undertake multifaceted sensitization programmes targeted at bonded labourers and at risk populations to ensure that they are aware of their rights and of avenues of remedy for violations.
- Ensure that penal and administrative sanctions are applied to all those involved in perpetrating debt bondage and that all victims are able to access redress for harm suffered, including adequate compensation.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, on her mission to El Salvador

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, on her mission to El Salvador from 18 to 29 April 2016. On the basis of information gathered prior to and during her visit, she highlights the encouraging steps taken by the Government to prevent and eradicate contemporary forms of slavery, including significant reductions in the worst forms of child labour, developments in the national legal and institutional framework and efforts to put a stop to forced labour. The Special Rapporteur makes recommendations to the Government of El Salvador on how to continue and build on that progress through a comprehensive and multifaceted programme of action that includes steps to eradicate and prevent all contemporary forms of slavery.

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Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, on her mission to El Salvador*

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* Circulated in the language of submission and in Spanish only.

I. Introduction

1. Pursuant to Human Rights Council resolution 24/3, and at the invitation of the Government, the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Urmila Bhoola, undertook a visit to El Salvador from 18 to 29 April 2016. During the visit, the Special Rapporteur collected first-hand information on the prevalence of contemporary forms of slavery within the country. Her meetings with national stakeholders allowed her both to identify the challenges that the country faces in relation to the eradication of all contemporary forms of slavery and to make recommendations to the Government on how to improve the situation.

2. While the Special Rapporteur was in El Salvador, she met with a broad range of stakeholders. They included representatives of the Foreign Ministry, the Office of the President, the Ministry of Justice and Public Security, the Ministry of Education, the Ministry of Labour and Social Security, the Ministry of the Interior and Territorial Development, the Directorate General for Migration and Alien Affairs, the Office of the Human Rights Advocate, the National Civil Police, the Technical Committee of the National Council on Trafficking in Persons, the National Council for Children and Adolescents, the Salvadoran Institute for the Advancement of Women, the Counsel General, the Supreme Court, and the Justice and Human Rights Legislative Committees of the Legislative Assembly.

3. She also met with representatives of the United Nations country team, the International Labour Organization (ILO), the United Nations Children's Fund (UNICEF), the International Organization for Migration, the United Nations Fund for Population Activities, the United Nations Development Programme (UNDP), the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), trade unions, private sector associations, victims of contemporary slavery and a range of non-governmental organizations.

4. During her visit, the Special Rapporteur met with interlocutors in San Salvador, as well as visiting Puerto El Flor, the city of Usulután and Puerto Parada. During the visits outside the capital, she met with local government officials, staff of non-governmental organizations working in the region, communities affected by issues relating to her mandate and community leaders. She also visited labour sites to observe mollusc fishing, where children are reported to be engaged in the worst forms of child labour.

5. The Special Rapporteur extends her sincere gratitude to the Government of El Salvador for the invitation and the spirit of openness that characterized her interactions with all government institutions and officials. In addition, she is grateful to all the stakeholders who took the time to meet with her and discuss issues of relevance to her mandate within the country.

II. Legal and institutional framework

A. Legal framework

6. El Salvador has signed or ratified many of the international human rights instruments relevant to contemporary forms of slavery. Although it is not a signatory to the 1926 Slavery Convention, El Salvador signed the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery on 7 September 1956. It has also ratified a number of relevant human rights instruments, including the Convention on the Rights of the Child, the International Covenant on Civil

and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Elimination of All Forms of Discrimination against Women. El Salvador has in addition ratified the eight fundamental ILO Conventions, including the Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No. 105) and the Worst Forms of Child Labour Convention, 1999 (No. 182). El Salvador has also ratified a number of instruments within the inter-American system. There is however a gap in that it has only signed but not ratified the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. The Special Rapporteur received information during her visit indicating that the country is taking steps to ratify the ILO Domestic Workers' Convention, 2011 (No. 189).

7. Article 144 of the Constitution of El Salvador provides that international treaties that the country ratifies are deemed to be incorporated into domestic law. The Special Rapporteur noted that there are specific national legal provisions broadly relating to the eradication of contemporary forms of slavery. They include the prohibition of slavery, servitude and the slave trade in the Constitution, the criminalization of forced labour and the worst forms of child labour in the Labour Code, the detailed list of the hazardous types of work that are prohibited for children under Agreement No. 241 of 2011, the 2011 Child and Adolescent Protection Act, which establishes a national system for child protection, the 2014 Special Act on Trafficking in Persons, and the 2011 Act on Equality, Equity and Elimination of Discrimination against Women.

8. While the Special Rapporteur commends the Government for the comprehensive legal framework that prohibits slavery and forced labour, she notes that specific focus on contemporary forms of slavery is weak, in that the emphasis remains on related practices and institutions. El Salvador has robust legal provisions relating to human trafficking, migration, child protection, violence against women, gender equality and protection against forced labour, but emphasis on contemporary forms of slavery is weak, as discussed below. Although those phenomena result in vulnerability to slavery, the specific manifestations of slavery have to be addressed. In her recommendations, the Special Rapporteur urges the Government to develop a holistic approach to eradicating contemporary forms of slavery as specific practices and to ensure that dedicated provisions to combat them are developed within the legal framework (see section V below).

B. Institutional framework

9. The Salvadorian State is divided into three branches: the executive, legislative and judiciary, and has 14 departments and 262 local government authorities. Each branch has autonomous decision-making powers and is supported by various administrative institutions. The institutions that are relevant to the mandate and that ensure institutional coherence across the three branches include the Salvadorian Institute for Comprehensive Child and Adolescent Development, the National Council on Trafficking in Persons, the National Council for Children and Adolescents, the National Committee on the Elimination of the Worst Forms of Child Labour, and departmental and local committees for the rights of children and adolescents established under the Child and Adolescent Protection Act. The Office of the Human Rights Advocate, an A status national human rights institution, is another key institution that is promoting and protecting human rights in El Salvador.

10. As the institutional framework broadly mirrors the legislative framework in El Salvador, the Special Rapporteur again noted that the specific focus on contemporary forms of slavery was weak, with attention tending to be on related phenomena. She therefore recommends that the Government deepen the specific focus on contemporary forms of

slavery. The Special Rapporteur received some information about gaps and issues relating to the efficiency of the institutional framework, such as provisions relating to education and child protection, which are discussed in section III below.

III. Key cross-cutting challenges

11. The Special Rapporteur was aware that she was visiting El Salvador at a deeply challenging time during which the Government was facing a range of complex, intersecting and mutually reinforcing difficulties. The challenges increase individuals' vulnerability to situations of contemporary slavery and the prevalence of multiple forms of servitude. The most striking and pertinent challenges about which the Special Rapporteur received information are discussed below.

A. Gang violence

12. In El Salvador there are two main gangs (*maras*) operating, known as the Mara Salvatrucha and Barrio 18. Stakeholders who met with the Special Rapporteur estimated that they each have around 70,000 members. As has been widely reported in the international media, gang violence between and by those *maras* has recently escalated in El Salvador. During her visit, the Special Rapporteur received disturbing reports of extortion, intimidation and violence perpetrated by gangs, including extortion of citizens and State officials, murder, including femicide, multiple forms of violence against women, extortion, violence and vandalism in schools, and the establishment of territorial control in some regions, which has impeded citizens' access to education, health and other State services.

13. The information received by the Special Rapporteur about gang activities included reports of practices that prima facie constitute contemporary forms of slavery and are prohibited under international human rights law. Such practices are discussed in section IV below. Beyond the issues of direct concern to her mandate, the Special Rapporteur was aware of the far-reaching impact that gang violence is having on the country. The effects were reported to include increases in precarious migration, including among unaccompanied children, depletion of the State's financial and technical capacity, disruption to children's education, constriction of shared public space, and deepening of gender inequality and of women's and girls' vulnerability to violence. Those phenomena will have a deep, long-lasting impact on Salvadoran citizens' vulnerability to multiple forms of contemporary slavery.

14. The Special Rapporteur discussed with many stakeholders the Safe El Salvador Plan, adopted by the Government and its partners to tackle the escalating gang violence and address other forms of violence in the country. The comprehensive plan focuses on five key areas, namely prevention of violence, criminal punishment, rehabilitation and reintegration, victim protection and assistance, and institutional enforcement. The plan, which was developed by the National Council for Citizen Security and Coexistence, contains a range of short, medium and long-term actions. The Special Rapporteur commends the Government for the development of the comprehensive and holistic plan and the inclusion of preventive elements, access to justice and care for victims and respect for human rights. As detailed in section V below, she urges the Government and all its partners to ensure the full and timely implementation of the plan as a key part of tackling and preventing slavery, and ensuring the effective protection of citizens against slavery and slavery-like practices.

B. Economic challenges, including severe fiscal constraints

15. While El Salvador is recognized as being a middle-income country, it currently faces a number of economic challenges. The country's economy has fared poorly since the outset of the global recession in 2009 when gross domestic product (GDP) contracted. Subsequent recovery has been weak with GDP growth averaging 2 per cent between 2010 and 2014, leading the Government to seek support from the International Monetary Fund, the World Bank and the Inter-American Development Bank.[1] Since 2015, GDP growth has increased marginally, but economic progress has been threatened by severe drought, a fungal attack on coffee harvests and declining levels of tourism due to concerns about security and the outbreak of the Zika virus. There is also a high level of continuing inequality within the country, with 31.8 per cent of the population classified as living in poverty despite the country having one of the largest economies in the Central American region.[2]

16. The gang problems also pose a threat to the economic growth of El Salvador. A study by UNDP and the central bank of El Salvador suggested that gang activity cost the country 16 per cent of its GDP through extortion money paid to gangs, productivity lost as a result of individuals being deterred from working owing to violence and the money spent by households and businesses on private security.[3] Gang violence also deters international investment and potential subsequent job creation because of the perceived risks and challenges associated with doing business in the country.

17. The complex economic difficulties faced by El Salvador include significant fiscal constraints. While meeting with stakeholders from across Government, the Special Rapporteur was often informed about the lack of available funds to tackle socioeconomic problems relating to contemporary forms of slavery and to invest adequately in the State's capacity to prevent human rights violations. According to the information received by the Special Rapporteur during her visit, the State faces a number of challenges in securing fiscal resources, including weak taxation systems, a small tax base due to high unemployment and a large informal sector, and a high level of external debt. During many of her meetings, the Special Rapporteur was struck by the commitment of government officials to taking preventive measures to protect and promote human rights, but noticed that they were constrained in their ability to do so because of the lack of fiscal resources.

18. The combination of those economic factors has a negative impact on people's vulnerability to slavery and the prevalence of servitude. The deterioration in the general economic climate in El Salvador has reportedly reduced decent work opportunities and the household income of many families. That increases the likelihood of people being trapped in situations of forced labour and can increase incidences where families have children engaged in the worst forms of child labour. Those most affected by economic challenges are also more vulnerable to forms of servitude perpetrated by gangs, as they do not have the resources to protect themselves from violence, through for example the purchase of private security services.

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[1] See http://country.eiu.com/article.aspx?articleid=1243911708&Country=El%20Salvador&topic=Economy&subtopic=Forecast&subsubtopic=Economic+growth&u=1&pid=1183833302&oid=1183833302&uid=1

[2] See http://data.worldbank.org/country/el-salvador

[3] See www.economist.com/news/americas/21699175-countrys-gangs-specialise-extortion-they-may-be-branching-out-gangs-cost

C. Gaps in education and the comprehensive protection of the child

19. One effect of the lack of fiscal resources on people's vulnerability to servitude in El Salvador is the difficulties the State faces in tackling gaps in the country's education system. The Special Rapporteur understands from her meetings that the Government recognizes the importance of education and its pivotal role in the future development of the country. She received information about a range of programmes and policies in place to give effect to the right to education in El Salvador, such as the five-year plan on education. However, interlocutors she met with consistently described significant gaps in the education system. They described how in many regions, particularly those in rural areas and those that are most affected by gang violence, secondary education facilities are not widely available, which affects a large number of adolescents. Many stakeholders described difficulties accessing schools in territories controlled by rival gangs, resulting in adolescents choosing to drop out or being compelled by their parents to do so. For example, when the Special Rapporteur met with Salvadoran citizens living in Usulután, parents described their concern that their children would not be able to access schools when they got older.

20. Furthermore, the Special Rapporteur received information that suggested that gang activities in schools are disrupting education services in El Salvador. That included reports of recruitment, extortion and violence in schools, as well as vandalism and theft of educational materials. The Special Rapporteur also received information that suggested that other challenges compounded the barriers to education created by gang violence. They are reported to include weaknesses to school infrastructure due to physical damage suffered during the civil war, the lack of a State policy on early childhood education and an absence of vocational training options for those looking to prepare to join the workforce. The Special Rapporteur strongly believes that education plays a fundamental role in the prevention of all forms of contemporary slavery and recommends that the Government of El Salvador continue its efforts to build a comprehensive and effective education system that spans early childhood to young adulthood.

21. In addition to concerns about the education system, the Special Rapporteur received information about weaknesses in the child protection system. She recognized the efforts that had been made to develop a national child protection system since the passing of the Child and Adolescent Protection Act. However she noted stakeholders' concerns about a lack of capacity to deal with complaints relating to child protection and gaps in the protection system, particularly for the most vulnerable groups.

D. Gender discrimination

22. The Special Rapporteur observed that many human rights violations relating to contemporary forms of slavery disproportionally affect women in El Salvador and she received reports about continuing gender discrimination in the country. According to information received, women face patriarchal attitudes and gender stereotypes, as well as barriers to gaining an education and decent work opportunities in the labour force. Reports of the structural barriers to empowerment that women face are confirmed by data collected by UNDP. Information collated for the 2014 Human Development Index suggested that in El Salvador, the mean number of years of education was 6.2 for females compared with 6.9 for males. Furthermore the proportion of those with a secondary education was 36.8 per cent among females compared with 43.6 per cent among males. Labour market figures mirrored those trends, with participation at 47.8 per cent for females and 79 per cent for males.[4]

[4] See http://hdr.undp.org/en/countries/profiles/SLV

While the Special Rapporteur recognizes the efforts the Government has made to tackle gender inequality, including through enacting legislation on equality and non-discrimination and establishing the Salvadoran Institute for the Advancement of Women, she urges the Government to continue to build on the progress achieved and to ensure that no regression occurs in relation to the human rights of women.

23. Including women in all levels of State activity sets a good example and helps to combat gender-based discrimination and improve protection against violence and exploitation. The Special Rapporteur received information that suggests that the number of women in State and political institutions is increasing, and she saw evidence of female decision makers in the different State entities with which she met while in the country. She received information about the 2013 Political Parties Act, which stipulates quotas for women's participation in a number of electoral processes and has resulted in more female politicians. Government data suggests that during the 2009-2012 legislative period, the number of female politicians was 19 per cent. It rose to 24.7 per cent for the 2012-2015 period and then to 32.1 per cent for the 2015-2018 period. In addition, for the 2009-2014 period, five women were in the Cabinet and for the 2014-2019 period, that number has increased to eight. The Special Rapporteur commends the Government of El Salvador for that progress and urges it to continue and build on it. The current level of women's representation is a positive development, but there is scope for further progress in all State governance and decision-making bodies. Furthermore, the Special Rapporteur received information that suggested that gender and women's rights were not consistently mainstreamed into all budgets, laws, policies and programmes. She therefore recommends that the Government develop gender sensitivity across all of its activities, with particular focus on initiatives to prevent and tackle all forms of contemporary slavery.

24. Gangs were described to the Special Rapporteur as being deeply patriarchal power structures that reportedly regard women as commodities only, resulting in women never gaining positions of influence in gangs and routinely being sexually exploited and forced to collect extortion money. Such deep gender discrimination affects women's vulnerability to slavery-like practices in the context of gang activities (as described in section IV below) and to more generalized forms of violence perpetrated against women by gang members, including femicide, sexual violence, disappearances and domestic abuse. In addition, given the strong and apparently increasing influence of gangs over the general population, particularly young people, such attitudes are likely to be influencing broader attitudes towards women and girls and increasing women's and girls' overall vulnerability to violence.

E. Complex migration flows

25. El Salvador is a country with a very high level of outward migration. A significant proportion of emigration was driven by the 12-year civil war that ended in 1992. It is estimated that 25 per cent of the population emigrated or fled during the conflict. Remittances from emigrants are a very important source of revenue for the country and are estimated to constitute 17 per cent of GDP.[5] Having such a pronounced Salvadorian diaspora has continued to drive emigration from El Salvador as people seek better economic opportunities and the chance to reunite with their families.

26. The trend in continued emigration has recently been complicated by reported increases in the number of people, including children and adolescents, fleeing gang violence. A number of stakeholders verbally reported to the Special Rapporteur that

[5] Ibid.

increasing numbers of people are using precarious and unsafe migration routes to try to escape gang violence. Those individuals were reported to include unaccompanied children and women who are trying to escape slavery-like practices, such as sexual servitude and forced recruitment by gangs. The use of *coyotes*, smugglers who take payment to assist people in reaching the United States of America, is reported to be increasing. The use of unsafe routes leaves people vulnerable to exploitation and forms of slavery while in transit, as discussed in section IV below. A number of stakeholders with whom the Special Rapporteur met described slavery-like practices in transit from El Salvador. Vulnerable, irregular migrants are often not able to enter target States, the most common being the United States. Those who do physically enter their destination country are often returned to El Salvador following the rejection of their asylum claims. The Special Rapporteur was informed that about 200 to 250 Salvadorans are returned every day. Many people are reported to try to enter the United States multiple times, which puts them at risk of multiple violations of their human rights and has a negative impact on the economy and the social fabric of El Salvador (as discussed below), as well as creating vulnerability to slavery and human trafficking.

27. While migration in El Salvador is strongly characterized by emigration, the Special Rapporteur received reports of immigrants who come to the country, mainly from Guatemala and Honduras. Information received by the Special Rapporteur suggested that the Government of El Salvador had taken steps to regularize those migrants and develop provisions to ensure that they could claim their rights on the same basis as Salvadoran citizens. However, as discussed in section IV below, those immigrants can be vulnerable to contemporary forms of slavery, most commonly domestic servitude. Therefore, the Special Rapporteur recommends that the Government expand protections and dedicate specific resources to preventing domestic servitude among migrant workers.

F. Disintegration of the social fabric

28. Stakeholders who met with the Special Rapporteur described what they referred to as the continuing disintegration of the social fabric in El Salvador. Many of them talked about the reduced capacity of families and communities to protect themselves and contribute to the development of the economy and society. The Special Rapporteur also received information about a lack of social infrastructure, including the gaps in the education system described above, and an absence of safe, shared public spaces, such as parks and sports fields.

29. Factors cited as contributing to the disintegration of the social fabric include a high level of emigration, family separation due in part to that outward migration, the legacy of the 12 years of civil war, high levels of impunity for certain human rights violations and the increasing prevalence of gang violence and its far-reaching effects on society, as discussed above. The disintegration was said to be providing fertile ground for gangs, thus creating a vicious cycle in which the gangs contribute to and benefit from the social destabilization.

IV. Issues of concern and positive developments in relation to contemporary forms of slavery

30. During her meetings with a wide range of stakeholders, the Special Rapporteur received information about a number of different forms of contemporary slavery, including violations perpetrated in the context of gang activities, and a number of different labour-related forms of servitude. Information received by the Special Rapporteur suggested that such violations were not always recognized as contemporary forms of slavery and that they affected highly vulnerable and at times invisible populations. The Special Rapporteur also

received much information that suggested that women and children were invariably disproportionality affected by the complex spectrum of violations identified.

31. While the Special Rapporteur identified several areas of concern in relation to her mandate, it was clear that significant positive progress had been made in a number of areas. She commends the Government of El Salvador for the progress, which is highlighted alongside the issues of concern below.

A. Slavery-like practices in the context of gang violence

32. While in El Salvador, the Special Rapporteur received multiple reports indicating that, within the context of the increasingly widespread gang violence, there were a number of forms of slavery-like practices.

33. One such practice is the enslavement of young women and girls. Extremely high levels of gender-based discrimination and violence against women perpetrated by gang members were reported to the Special Rapporteur. Such subjugation of women allegedly includes forcing young women and girls to become gang members' sexual partners. Failure to comply is reportedly met with severe reprisals, including homicides of the girl's or woman's entire family or the threat of such violence. The most common form of extreme extortion of sexual and other services described by the interlocutors involves forcing them to provide sexual services to gang members in prisons. Gang members reportedly threaten women and their families with violence or death in order to force them to repeatedly make conjugal visits to gang leaders and members in prisons. In many instances, they are also forced to smuggle telephones and weapons into the prisons. In some situations, women and girls are reportedly forced to comply with a regular schedule of conjugal visits compiled by gangs. Some young girls in school have been told they have been selected as a "gift" for a gang leader. As a result, one mother of young girls told the Special Rapporteur that she would not allow her daughters to attend secondary school for fear of them falling prey to gangs that target girls in schools. The Special Rapporteur notes legislative efforts to increase the regulation of prison visitation under chapter III of the 2015 Prisons Act, including the power to suspend prison visits and carry out checks to verify the marital status of those requesting conjugal visits. However, she received reports that suggested that gang members were able to have female victims visit them in prisons without sufficient supervision or regulation. She therefore urges the Government to ensure that the relevant provisions of the 2015 Prisons Act are fully and effectively implemented.

34. The Special Rapporteur also received information that suggested that other modalities of sexual slavery-like practices among gang members had been seen in the country. For example, she was told of instances in which gang members had physically invaded the homes of women, evicted or killed male members of the household and forced the women to work in domestic and sexual servitude.

35. The Special Rapporteur received disturbing information about slavery-like practices perpetrated by gangs against children and others who were forcibly recruited to gang structures. Young children are reported to be targeted by gangs because the age of criminal responsibility means that they are less vulnerable to prosecution. The children are reported to be recruited in their schools and communities. Stakeholders informed the Special Rapporteur that gangs used violence and the threat of violence against children and their families to force individuals to join gangs and undertake criminal activities, including looking out for the police, collecting extortion money and transporting drugs. Forced participation in gang activities was also reported to the Special Rapporteur to affect women. The Special Rapporteur was repeatedly told that once children and women are forcibly recruited into gang structures, they are not able to leave, therefore becoming locked into dangerous, exploitative and dehumanizing situations.

36. The Special Rapporteur is alarmed by such reports and believes that they prima facie constitute slavery-like practices. While acknowledging the development of the Safe El Salvador Plan, she recommends that the Government, in addition to implementing the plan, consult with all key stakeholders, including women and children who have been affected by such practices, in order to develop a comprehensive programme of action to specifically address such slavery-like practices and enhance protection for women and girls. Furthermore, she recommends that the Government increase prosecution rates for such crimes and ensure that they are legally recognized as slavery-like practices.

B. Forced labour

37. The Special Rapporteur received information indicating that extremely exploitative labour conditions exist in certain sectors, including the *maquila* sector, home-based embroidery and private security companies. The Special Rapporteur gained the impression that some practices within those sectors are so deeply exploitative that she is concerned that they are indicative of the presence of forced labour.

38. *Maquilas* are garment production facilities commonly located in export processing zones, areas where companies can establish production facilities under favourable conditions. The export processing zones were established after the civil war as a way of attracting international investment to El Salvador. The practice has led to the development of the *maquila* sector, which is currently reported to employ around 70,000 persons and produce around 12 per cent of GDP.[6] The *maquilas* in El Salvador are reported to be part of the supply chains for major international garment manufacturers. The extensive use of *maquilas* has been seen across Central America, with the majority of workers being young women.

39. In El Salvador, women are reported to constitute 78 per cent of workers in *maquilas*.[7] Those women are often from disadvantaged communities in rural areas and have a low level of education. While some people who met with the Special Rapporteur suggested that conditions for women in *maquilas* had improved in recent years following international attention on the sector, many reported ongoing exploitation and practices that the Special Rapporteur assessed as being potentially indicative of forced labour. They include extremely long working hours without being able to take breaks, high production quotas for workers, which continually increase, non-payment of workers who do not reach the production quotas, and the sudden closure of factories without notice or payment of outstanding wages. The Special Rapporteur was concerned about information that suggested that the rights of people to exercise freedom of association and peaceful assembly were curtailed in the *maquila* sector by strong anti-union practices, hazardous working conditions and non-payment of social security contributions to the State, despite equivalent deductions being taken from workers' salaries.

40. Also related to the manufacturing of garments within global supply chains, the Special Rapporteur received concerning reports about women who are contracted to embroider fabric in their own homes. Those workers, who like those in *maquilas* are predominantly women, are reportedly at the bottom of the garment manufacturing supply chain. According to the information received by the Special Rapporteur, they are typically given work by small manufacturing businesses or intermediaries who visit their homes and assign them materials and production targets. They are not registered employees and therefore have no labour rights and bear many of the production costs, such as electricity,

[6] See www.somo.nl/publications-en/Publication_3687.

[7] Ibid.

water and workspace. Like women working inside the *maquilas*, they reportedly have to meet extremely high production quotas, which increase over time. If they do not meet the quotas, they are reported to forfeit payment for the work they have completed, and in some instances the work that has been completed is even destroyed in their presence as punishment for not having met the production quota. Women reported other forms of abuse by supervisors, including verbal abuse, being forced to work despite having just given birth, and the sudden cessation of work without notice or payment for work done, as business entities close down and disappear overnight. The Special Rapporteur was also concerned that such practices could be contributing to child labour, as the extremely high production targets that companies assign to workers apparently compel workers to seek assistance from their children.

41. Another sector that was described to the Special Rapporteur as having deeply exploitative working conditions is the private security sector. Private security firms are commonly used in El Salvador to provide protection against gang-related violence. Households and private businesses spend a significant percentage of GDP on the purchase of private security services. Given the increasing demand for those services, there has been high demand for workers in that sector. The workers are reported to be subjected to highly exploitative labour practices that the Special Rapporteur believes could be indicative of the presence of forced labour. They include extremely long working hours, reportedly up to and at times in excess of 24 hours, very low wages, hazardous conditions, deductions from wages to cover weapons and uniforms, and the inability to take rest breaks during working hours.

42. The Special Rapporteur noted that the Government had taken positive steps to tackle cases of forced labour. She received a number of reports that suggested that working conditions in the *maquila* sector had improved over the past 20 years. She commends the Government for that and recognizes that forced labour is criminalized under the Labour Code and that the labour inspectorate has made efforts to ensure compliance with national labour standards. However, information received from the interlocutors she met with suggested that a number of challenges persisted in terms of preventing the eradication of forced labour practices and ensuring the labour rights of all Salvadoran citizens. The challenges included the limited capacity of the labour inspectorate, which is reported to undertake some 25,000 inspections a year among the country's 140,000 businesses, weak penalties for forced labour within the Labour Code, the outdated nature of the Code and a very low rate of prosecution for related offences. Furthermore, she understood that the economic challenges faced by El Salvador and the lack of decent work opportunities are contributing to individual vulnerability to labour market exploitation and incidences of forced labour. As outlined in section V below, the Special Rapporteur urges the Government of El Salvador to implement a range of measures to fully eradicate forced labour and prevent such violations in the future.

C. Worst forms of child labour

43. The Special Rapporteur received multiple reports from a range of stakeholders indicating that the prevalence of the worst forms of child labour in El Salvador has significantly reduced. The Government of El Salvador has led a range of multi-stakeholder initiatives involving partners such as ILO, trade unions and private sector associations of sugar cane plantations. Such initiatives include the development of the National Committee on the Elimination of the Worst Forms of Child Labour, the establishment of a comprehensive road map for the elimination of the worst forms of child labour, the passing by Presidential Decree of procurement guidelines under which those who do business with the Government must commit to the absence of child labour in their operations, investment in data collection on child labour, and the design of an inter-agency protocol on the

prevention of child labour, and on the withdrawal of children and adolescents from child labour, including mechanisms for referral and coordination between the Ministry of Labour and Social Security and other key players. Those wide-ranging initiatives are reported to have resulted in a decrease of over 90 per cent in the worst forms of child labour.[8] The Special Rapporteur commends the Government of El Salvador and its partners for those positive developments. She noted the particular progress that had been made in relation to the worst forms of child labour in the sugar cane sector. In 2015, the Minister of Labour and Social Security and the Sugar Association of El Salvador developed the Cooperation Agreement for the Elimination of Child Labour in the Sugar Cane Industry, which formally establishes sustained multi-stakeholder engagement within the sector between the Government, ILO, trade unions and private sector associations.[9]

44. Despite that progress, the Special Rapporteur received information that suggested that the worst forms of child labour continue to persist in several contexts, including forced begging on the street, and in a number of sectors, such as the fisheries sector, domestic work and agriculture.

45. Forced begging, which is cited by ILO as one of the worst forms of child labour, is reported to take place in San Salvador and other urban centres, including the city of Usulután, which the Special Rapporteur visited. Children are reportedly forced, often by family members, to beg, sell small personal items, perform on the streets and wash car windows in order to collect money. The money must often then be given to family members or others who have forced the children to take part in the activities. Those highly exploitative practices disrupt children's right to an education and leave them highly vulnerable to additional violations of their rights.

46. Within the fisheries sector, children often accompany their parents to work on labour sites. Children and their parents farm for seafood within the mangroves in some parts of El Salvador and then sell what they collect to local traders. When the Special Rapporteur visited Usulután, she visited a mangrove swamp where people fished for molluscs and where it is reported that adult workers take their children to work. Workers with whom the Special Rapporteur met described how a bag of molluscs, which typically took many hours to collect, would sell for a limited amount of money to businesses and intermediaries who used the produce in restaurants. For example, one worker told the Special Rapporteur that 60 clams would sell for about US$ 2.75, which contrasted sharply with the retail cost of the seafood within local restaurants. During her visit, the Special Rapporteur saw first-hand the dangerous conditions in which people work. She is deeply concerned by the use of child labourers in that context. Workers, including children, often smoke in order to repel mosquitos and they are vulnerable to illness because of the long exposure to water and changing temperatures. The workers the Special Rapporteur met with also reported the increasing risk of gang violence faced by those working in the mangrove swamps, further highlighting the hazards to which children can be exposed.

47. The Special Rapporteur received information about children employed in domestic work, in conditions classified as one of the worst forms of child labour. That form of labour affects girls more than boys and migrant children from other Central American countries can be particularly vulnerable. While it is difficult to assess the level of domestic work among children in El Salvador because of the hidden nature of the work, information

[8] See http://azucardeelsalvador.com/fundacion-del-azucar-y-ministerio-de-trabajo-y-prevision-social-renuevan-convenio-de-cooperacion-para-la-erradicacion-de-trabajo-infantil-en-cana-de-azucar/.

[9] See ILO, "El Salvador renueva Convenio de Cooperación para la Erradicación de Trabajo Infantil en Caña de Azúcar", 2015. Available from www.ilo.org/sanjose/sala-de-prensa/WCMS_380559/lang--es/index.htm.

compiled by the Ministry of Education in 2013 suggested that 8.87 per cent of children aged under 14 carried out domestic work, despite the provision in the Child and Adolescent Protection Act establishing the minimum age for domestic service as 16 years of age.[10] Human Rights Watch investigations into that phenomenon in several countries including El Salvador found that child domestic workers can work up to 16 hours a day, 7 days a week. They are poorly paid and can be highly vulnerable to physical and sexual abuse.[11] Despite those deeply concerning conditions, the Special Rapporteur did not get the impression that domestic work among children and young people had to date been an area of focus of efforts to eradicate the worst forms of child labour in El Salvador. She recommends that the Government take immediate steps to address that issue.

48. While the Government of El Salvador has clearly made a strong commitment to eliminating the worst forms of child labour and has achieved significant progress, a number of challenges persist. The Special Rapporteur was informed that the labour inspectorate conducts only two inspections a month to regulate the use of child labour. Furthermore, it does not include domestic work in its inspections, as such work takes place in private households or in the informal sector. That lack of coverage of sectors in which the worst forms of child labour are present creates labour protection gaps. The Special Rapporteur received information about additional challenges, including the social acceptance of the worst forms of child labour in much of Salvadorian society and the lack of decent work opportunities for parents, which compels them to allow or at times force their children to engage in the worst forms of child labour.

49. The Special Rapporteur is concerned about the continued existence of some of the worst forms of child labour; she got the impression that those affected were in deeply disadvantaged and highly vulnerable situations. As outlined in section V below, she urges the Government of El Salvador and its partners to build on their existing examples of good practice to ensure the total elimination of all of the worst forms of child labour. That will require them to take a holistic approach that tackles both continuing cases of the worst forms of child labour and its complex root causes.

D. Domestic servitude

50. It is not only children who are victims of domestic servitude in El Salvador. Interlocutors who met with the Special Rapporteur described how there are also cases of adults who are subjected to that severe form of exploitation. The Ministry of Labour and Social Security was not able to provide disaggregated statistics on the prevalence of domestic servitude, but it indicated to the Special Rapporteur that while a majority of victims were Salvadoran, migrants from other Central American States were also vulnerable to that form of servitude. While statistics were also not available on the gender breakdown of domestic workers, many stakeholders reported to the Special Rapporteur that the majority of those employed in domestic work are women.

51. Domestic work operates outside the scope of labour regulation in El Salvador, with employers reportedly not being compelled to give employees a written employment contract and the labour inspectorate not covering that sector. While not all instances of domestic work constitute servitude, domestic workers are highly vulnerable to forced labour practices and other severe forms of related abuse. The Special Rapporteur received concerning reports of non-payment of domestic workers, sudden cessation of work without pay or notice, extremely long working hours, verbal and physical abuse, unfounded accusations against

[10] See www.unicef.org/elsalvador/Informe_de_situacion_de_la_NNA_en_El_Salvador.pdf

[11] See www.hrw.org/news/2011/06/09/ilo-adopt-new-treaty-combat-child-labor

workers, sexual abuse by male household members and restrictions of the freedom of movement of workers.

52. It was clear to the Special Rapporteur that the Government of El Salvador recognized the issue of domestic servitude as a key concern. She received information about the development of a procedural manual to support migrant domestic workers in gaining residency and thus reducing their vulnerability to exploitation, as well as efforts to ratify the ILO Domestic Workers Convention, 2011 (No. 189). She commends the Government for taking those steps, but remains concerned about the vulnerability and abuse of such workers who remain behind closed doors and without access to any form of labour rights. The Special Rapporteur therefore recommends that the Government increase its efforts to eradicate those practices and that it close the protection gaps that currently exist in the national legal and institutional framework.

E. Lack of access to justice for victims of servitude

53. Access to justice for victims of all forms of slavery is essential for the rehabilitation and reintegration of individuals, as well as in order to address systemic impunity for such crimes. The Special Rapporteur received information from a number of different sources that suggested that victims of many different forms of contemporary slavery in El Salvador faced significant barriers to access to justice and redress. The barriers include difficulties filing complaints to the authorities, low prosecution rates for many forms of slavery, corruption among some government officials and a lack of adequate protection for victims within the judicial system. According to information received by the Special Rapporteur, both historical victims of slavery, such as those subjected to servitude in the context of the civil war, and current victims have experienced those barriers. The denial of the right to access to justice creates high levels of impunity for violations of people's human rights. That undermines the rule of law and creates an environment in which it is more difficult for the Government of El Salvador to promote and protect the human rights of all citizens.

54. In order to move forward and ensure the eradication and prevention of all forms of contemporary slavery, the Government of El Salvador must dedicate resources and attention to providing access to justice for victims of all forms of servitude, as indicated in more detail in section V below.

F. Situations of servitude in transit

55. The Special Rapporteur received some information of concern relating to potential situations of servitude when Salvadoran citizens are in transit to other countries. As discussed in section III above, El Salvador has a high level of emigration driven by various factors, including family reunification and economic reasons. The Special Rapporteur received information that suggested that precarious, irregular migration in order to escape gang violence is increasing. Within the context of those trends, the Special Rapporteur was told that Salvadoran migrants, including unaccompanied minors, can be subjected to situations of servitude in transit, such as severe labour exploitation or being forced to transport drugs under duress. She recognizes the commitment made by the State to Salvadorans abroad within the 2014-2019 national development plan,[17] the protections included in the Special Act on the Protection and Advancement of Salvadoran Migrants and Their Families, adopted on 17 March 2011, and the work of the National Council for the Protection and Advancement of Migrants and Their Families. While the Special Rapporteur

[17] See www.presidencia.gob.sv/wp-content/uploads/2015/01/Plan-Quinquenal-de-Desarrollo.pdf.

did not receive extensive information about slavery-like practices in transit, she urges the Government of El Salvador to build on current efforts and work with countries in the region and the international community to investigate potential situations of servitude and ensure comprehensive protection for individuals who are affected by or at risk of such practices.

G. Early marriage

56. Statistics produced by UNICEF estimate that in El Salvador, 5 per cent of girls are married before the age of 15 and that 25.4 per cent are married before the age of 18.[11] During her visit, stakeholders informed the Special Rapporteur that, while the law establishes the age of marriage at 18, there are exceptions, and early marriages between girls under 18 and older men are perceived as normal by much of Salvadorian society. As indicated by Anti-Slavery International, not all early marriages can be classified as forced marriage, particularly when the girl is an older teenager and is married to a male of a similar age. However anecdotal evidence collected by Anti-Slavery International suggests that globally, the proportion of early marriages that are forced is high. The Special Rapporteur did not receive concrete information of concern relating to instances of forced, early marriage while in El Salvador. However information she received suggests that there is limited understanding of the dynamics of early marriage in the country. She is therefore concerned about whether there are hidden cases of forced marriage among girls under 18. The Special Rapporteur recommends that the Government of El Salvador invest in increasing data collection and monitoring in relation to early marriage in order to ensure that situations of, or risk of, servitude are detected and addressed.

V. Conclusions and recommendations

A. Conclusions

57. **During her visit the Special Rapporteur identified a complex spectrum of violations relating to contemporary forms of slavery that have a high impact on vulnerable elements of the population whose plight remains invisible. She was deeply concerned to hear of women being subjected to sexual abuse by gang members in slavery-like conditions, and the forced recruitment of children into gang activities. She believes that such practices prime facie constitute slavery-like practices. The Special Rapporteur also received information about other issues of concern, including the worst forms of child labour, forced labour and domestic servitude.**

58. **Such a complex spectrum of contemporary forms of slavery requires a comprehensive and multifaceted response by the Government of El Salvador. As explained in the recommendations below, the Special Rapporteur urges the Government to develop a broad range of initiatives and to build on current efforts to tackle contemporary slavery. Such measures should include strengthening the institutional and legal framework, tackling slavery-like practices in the context of gang activities, increasing access to education, increasing gender parity, further developing child protection systems, increasing access to decent work opportunities, building on success in reducing child labour, fighting forced labour and developing data collection and monitoring systems.**

[11] See www.unicef.org/infobycountry/elsalvador_statistics.html.

59. **Within the context of implementing such a multifaceted programme of change, the Special Rapporteur urges the Government of El Salvador to increase specific attention to the phenomenon of contemporary slavery. During her visit, she noted that awareness of the phenomenon of contemporary slavery was low in El Salvador. The Special Rapporteur noticed that contemporary slavery did not tend to be specifically integrated into legal, policy and institutional mechanisms. In the context of implementing the necessary reforms, she suggests developing a stronger focus in national legal and institutional frameworks specifically on contemporary forms of slavery, as defined in the Slavery Convention and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.**

60. **Given the significant challenges and constraints faced by the Government of El Salvador, the Special Rapporteur calls upon the international community to increase its technical and financial support to the country. Such support should bolster the Government's capacity to implement the Safe El Salvador Plan, to address root causes of contemporary slavery and to invest in social programming and the preventive capacity of the State. Supporting the Government in achieving the promotion and protection of human rights and implementing the programme of change outlined below will serve to protect individuals from contemporary slavery and ensure that the country can overcome its current challenges and constraints to achieve a more prosperous and peaceful future.**

B. Recommendations

61. **Regarding the legal and institutional framework, the Special Rapporteur recommends that the Government:**

(a) **Strengthen the focus on contemporary slavery as a specific phenomenon in the national legal and institutional framework. It could, for example, consider developing a multi-stakeholder initiative similar to that it has set up on trafficking, or broadening the scope of the national anti-trafficking initiatives to include contemporary forms of slavery;**

(b) **Continue the process of ratifying the ILO Domestic Workers Convention, 2011 (No. 189) and ensure that it enters into force in El Salvador as soon as possible;**

(c) **Fully ratify the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery;**

(d) **Increase administrative and criminal penalties for forced labour in the Labour Code;**

(e) **Ensure that the proposed legal amendment to the implementation of the Labour Code, including the provisions on strengthening the labour inspectorate and increasing labour market protection for domestic workers, is passed by the legislature;**

(f) **Introduce any further amendments to the Labour Code that are necessary to ensure that it complies fully with international law;**

(g) **Continue to build the national child protection system and ensure that it has adequate capacity to protect children who are at risk of or are subjected to contemporary slavery and associated human rights abuses;**

(h) **Ensure that all legal provisions concerning child marriage are in accordance with international human rights standards and provide protection against forced marriage, including by giving consideration to removing any exceptions to the legal age for marriage as 18;**

(i) **Develop a comprehensive national network of shelters for victims of violence relating to contemporary slavery.**

62. **Regarding contemporary slavery in the context of gang activities, the Special Rapporteur recommends that the Government:**

(a) **In consultation with all key stakeholders, and in the context of the implementation of the Safe El Salvador Plan, develop a comprehensive range of targeted measures to put a stop to the situations of sexual exploitation in slavery-like conditions and forced recruitment of children and others that are currently perpetrated by gangs;**

(b) **Review the legal provisions related to conjugal visits in prisons in order to ensure adequate protection of women's rights and prevent slavery-like practices, and ensure the full and effective implementation of those provisions;**

(c) **Avoid any criminalization of women and children who may have conducted criminal activities while subjected to slavery-like practices in the context of gang activity;**

(d) **In the context of reducing gang violence, avoid weakening the legal protection available to juvenile offenders and ensure that all legal provisions concerning juvenile offenders are fully compliant with the Convention on the Rights of the Child;**

(e) **Ensure the effective implementation of the Safe El Salvador Plan in order to achieve a full-scale reduction in gang violence and make certain that the plan is implemented in full respect of all international human rights standards;**

(f) **Allocate specific resources to ensuring the protection of the rights of women and children in its efforts to eradicate gang violence and ensure that consideration of their rights and specific needs and vulnerabilities are mainstreamed in all security-related policies and practices;**

(g) **Ensure that comprehensive rehabilitation programmes are in place to support those who have been subjected to slavery-like practices by gangs to reintegrate into Salvadorian society.**

63. **Regarding gender discrimination, the Special Rapporteur recommends that the Government:**

(a) **Tackle all forms of gender discrimination in El Salvador, with a particular focus on ensuring that men and women have equal access to education and equal decent work opportunities as key means of preventing contemporary forms of slavery;**

(b) **Continue efforts to ensure women's representation at all levels of Government and in State decision-making entities;**

(c) **Ensure that gender considerations are mainstreamed into all laws, policies and programmes in El Salvador, with a particular focus on those relating to the prevention and eradication of contemporary forms of slavery.**

64. **Regarding access to education, the Special Rapporteur recommends that the Government:**

(a) **Ensure access to all levels of education for children and young people in El Salvador as a key preventive measure against contemporary slavery and pursue and extend current initiatives designed to ensure children's access to education;**

(b) **In the context of those initiatives, allocate additional specific resources to ensuring equity of educational provision between rural and urban areas;**

(c) **Ensure that adequate educational provision is available to children at the higher levels of education in order to prevent the high dropout rate caused by a lack of available provision;**

(d) **Provide additional security in schools in order to protect them from gang violence and remove the disincentives linked to insecurity that currently contribute to school dropout rates;**

(e) **Allocate specific resources to investing in early childhood education as a key means of preventing violence and exploitation;**

(f) **Ensure that programmes are in place to enable children who have had to leave education for periods of time, including due to being victims of contemporary forms of slavery, to transition smoothly back into educational institutions, thus supporting their reintegration and recovery and helping to protect against further violations of their rights;**

(g) **Develop vocational training opportunities for adolescents and young people in order to facilitate their transition into decent work, which will help protect them from contemporary forms of slavery.**

65. **Regarding decent work opportunities, the Special Rapporteur recommends that the Government:**

(a) **Ensure that the programmes designed to facilitate young people's access to employment opportunities are extended to cover all areas of the country;**

(b) **Accelerate current initiatives designed to increase the minimum wage and ensure that the amount agreed upon constitutes a living wage for citizens in El Salvador;**

(c) **Ensure that an environment conducive to trade union activity is encouraged across all sectors and that the rights to freedom of association and collective bargaining are universally respected.**

66. **Regarding forced labour, the Special Rapporteur recommends that the Government:**

(a) **Based on the good practice it has developed in relation to eliminating child labour, develop a scheme whereby all public procurement contracts contain clauses to ensure the absence of forced labour;**

(b) **Increase the capacity and expertise of the labour inspectorate in order to ensure compliance with the legal standards prohibiting forced labour;**

(c) **Ensure that the coverage of the labour inspectorate is increased to include all areas of the country and all areas of the informal sector;**

(d) **Review the regulatory framework in place concerning the labour practices of businesses that operate, directly or through their supply chains, in**

El Salvador, to ensure that it protects the rights of Salvadoran citizens and is in accordance with international human rights standards, relevant ILO conventions and the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework.

67. Regarding the worst forms of child labour, the Special Rapporteur recommends that the Government:

(a) Continue multi-stakeholder initiatives to eliminate the worst forms of child labour, drawing on existing examples of good practice and ensuring that the initiatives are extended to cover all sectors in which children engage in the worst forms of child labour;

(b) Increase the capacity of the labour inspectorate to ensure that employers comply with the legal standards criminalizing the use of the worst forms of labour;

(c) Allocate specific resources to tackling the exploitative and dangerous practice of forcing children to beg;

(d) Prioritize child domestic work in ongoing efforts to tackle the worst forms of child labour;

(e) In the context of the implementation of the Sustainable Development Goals, continue and increase targeted poverty reduction programmes that mitigate the need for families to have their children engage in the worst forms of child labour, including by investigating how current conditional cash transfer programmes can be further utilized to prevent the worst forms of child labour;

(f) Raise awareness among parents in communities affected by the phenomenon about the risks associated with the worst forms of child labour in sectors including agriculture, fisheries, mollusc farming and forced begging, including by challenging the cultural beliefs that continue to contribute to the acceptance of the worst forms of child labour.

68. Regarding domestic servitude, the Special Rapporteur recommends that the Government:

(a) Develop specific protection for migrants who come to El Salvador in order to ensure that they are not subjected to situations of domestic servitude;

(b) Investigate models of regulation whereby the Ministry of Labour and Social Security and the labour inspectorate could develop oversight of work undertaken within private homes;

(c) Ensure the timely ratification of ILO Domestic Workers' Convention, 2011 (No. 189) and its full incorporation into the national legal framework.

69. Regarding access to justice, the Special Rapporteur recommends that the Government:

(a) Ensure that all historical and current violations of the rights of those subjected to contemporary slavery are addressed through effective and proportionate forms of remedy;

(b) Increase the capacity of the judiciary to try violations of the Labour Code;

(c) Increase the focus on victim protection within the judicial system, including the development of specific protocols to protect women and children;

(d) **Ensure that those who are victimized by gangs are able to access justice and are not criminalized for any action taken while subjected to situations of servitude.**

70. **Regarding data collection, monitoring and evaluation, the Special Rapporteur recommends that the Government:**

(a) **Collect disaggregated information on the prevalence of all the contemporary forms of slavery that she has identified;**

(b) **As part of that endeavour, ensure that data is collected about the prevalence and modalities of early marriage within El Salvador in order to effectively detect any practices that could constitute forced marriage;**

(c) **Increase the capacity of the State to collect data on factors such as age, gender, migration status and socioeconomic circumstances that create vulnerability to contemporary slavery;**

(d) **Routinely monitor and evaluate the efficacy of all interventions to prevent and eradicate contemporary slavery.**

71. **The Special Rapporteur recommends that the international community:**

(a) **Increase the amount of international aid provided to the Government of El Salvador in order to effectively address complex national challenges, with a view to supporting implementation of the Safe El Salvador Plan and initiatives to tackle more deep-seated root causes of current phenomena that cause or create vulnerability to contemporary slavery;**

(b) **Increase the level of technical support that is provided to El Salvador;**

(c) **Support El Salvador and other countries in Central America to investigate and tackle issues relating to situations of servitude in transit that affect vulnerable and irregular migrants from the country.**

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*

Note by the Secretariat

In its resolution 27/3, the Human Rights Council requested the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence to continue to report annually to the Council. The next report of the Special Rapporteur will be submitted to the Council at its thirty-fourth session.

* The present document was submitted after the deadline in order to reflect the most recent developments.

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Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Idriss Jazairy, prepared pursuant to Council resolutions 27/21 and 30/2. In the report, the Special Rapporteur lists the key activities that he undertook between July 2015 and June 2016. He then focuses on the issues of remedies and redress for victims of unilateral coercive measures, based on a review, assessment and evaluation of the various mechanisms available to victims. Finally, he recommends steps to be taken to reinforce or create avenues for remedies.

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Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights

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I. Introduction

1. The present report is submitted by the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Idriss Jazairy, pursuant to Human Rights Council resolutions 27/21 and 30/2.

2. The Human Rights Council, in its resolution 30/2, and the General Assembly, in its resolution 70/151, requested the Special Rapporteur to focus on the negative impact of unilateral coercive measures on the enjoyment of human rights of victims and to address the issues of remedies and redress with a view to promoting accountability and reparations in his next reports.

3. In the present report, the Special Rapporteur focuses on the issues of remedies and redress and, in line with his mandate, reviews, assesses and evaluates the various mechanisms available to victims of unilateral coercive measures. The report will be supplemented by the report that the Special Rapporteur will submit to the General Assembly at its seventy-first session, in which he will examine the conceptual aspects of the remedies relating to violations of human rights owing to the application of unilateral coercive measures in international law, human rights law and humanitarian law.

4. Given the complexity of the subject matter and its multifaceted and intricate aspects, the findings set out in this report, as well as the conclusion and the recommendations formulated, are preliminary and tentative. The Special Rapporteur welcomes any comments, information and suggestions that Governments, non-governmental organizations and any other interested parties may have on remedies and redress in relation to the negative impact of unilateral coercive measures on human rights.

II. Activities of the Special Rapporteur

5. Since 15 July 2015, the Special Rapporteur has sent requests for official visits to the European Union and Zimbabwe and a reminder to the United States of America. At the time of writing the present report, he had not received any replies. The Special Rapporteur received an invitation to visit the Syrian Arab Republic.

6. Between 15 July 2015 and 30 June 2016, the Special Rapporteur issued eight press releases, three of which were issued jointly with other special procedures.

7. On 17 September 2015, the Special Rapporteur participated in the first biennial panel discussion on the issue of unilateral coercive measures and human rights, held in Geneva.

8. On 26 October 2015, the Special Rapporteur presented his first report to the General Assembly (A/70/345), which consisted of a preliminary review of the human rights adversely affected by unilateral coercive measures.

9. The Special Rapporteur carried out his first official country visit to the Sudan from 23 to 30 November 2015 (see A/HRC/33/48/Add.1). He thanks the authorities of the Sudan for their engagement with his mandate. At the end of his visit, the Special Rapporteur issued a press statement containing his preliminary observations and recommendations.[1]

[1] See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16824&LangID=E.

10. On 15 December 2015, the Special Rapporteur joined with three other mandate holders and sent a communication to India regarding the alleged blockage at the Nepal-India border of vessels carrying essential goods, which had resulted in a lack of basic supplies and services to the people of Nepal (see A/HRC/32/53, p. 29). The Government of India replied on 28 December 2015.[2]

11. On 22 February 2016, the Special Rapporteur sent letters to member States reiterating his request for information on unilateral coercive measures. Thirteen countries[3] sent written information. The Special Rapporteur thanks the Governments that replied and encourages all member States to provide him with the requested information so as to enable him to fulfil his mandate. In addition, in order to preserve the integrity of the Human Rights Council, he invites all States to engage in good faith with all special procedures, as requested by the Council in its resolutions, regardless of the voting record that led to the creation of the mandates.

12. On 21 June 2016, the Special Rapporteur participated in a side event, held during the thirty-second session of the Human Rights Council, on the negative impacts of unilateral coercive measures.

III. Follow-up to previous recommendations of the Special Rapporteur

13. Since his appointment, the Special Rapporteur has submitted reports containing several observations and recommendations relating to the theme of his mandate to the Human Rights Council and the General Assembly.[4]

14. The Special Rapporteur reiterates all his recommendations, in particular the recommendation to set up a consolidated central register at the level of the Security Council or of the United Nations Secretariat to recapitulate the list of all unilateral coercive measures in force (see A/HRC/30/45, para. 56 (a)). This register should be kept according to the standards currently applied for Council sanctions and made public. Sender/source States or group of States should be invited to notify the Council of unilateral coercive measures in force at their initiative and of their evolution. Such a mechanism could draw on the model of the United Nations Register of Conventional Arms, which includes data on international arms transfers as well as information provided by member States on military holdings, procurement through national production and relevant policies.[5]

IV. Remedies available to States affected by unilateral coercive measures

A. Remedies available under the Charter of the United Nations

15. The Charter of the United Nations (Article 33) sets out a number of mechanisms for the settlement of disputes between sovereign States, which may be of relevance for States on which unilateral coercive measures that affect the enjoyment of human rights by their

[2] See https://spdb.ohchr.org/hrdb/31st/India_28.12.15_(16.2015).pdf.

[3] They were Angola, Bahrain, Belarus, Bolivia (Plurinational State of), Cuba, Ecuador, Iran (Islamic Republic of), Kuwait, Mexico, Montenegro, Russian Federation, Sudan and Syrian Arabic Republic.

[4] See A/HRC/30/45 and A/70/345, in particular paras. 56, 64, 66, 68, 70, 72 and 76.

[5] See General Assembly resolution 46/36 L, para. 7.

populations have been imposed. These mechanisms are also referred to in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, according to which, States shall seek early and just settlement of their international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice.[7]

16. While States are free, as a matter of principle, to agree on such peaceful means as may be appropriate to the circumstances and the nature of their disputes,[8] they are obligated to fulfil in good faith their obligations under the Charter. The legality of recourse to countermeasures in situations where inter-State negotiations are under way remains questionable.[9]

17. The Charter also provides that the Security Council shall, when it deems necessary, call upon the parties to settle their dispute by peaceful means (Article 33(2)), and that any member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly (Article 35(1)). The Special Rapporteur points out that, in accordance with Article 50 of the Charter, any State confronted with special economic problems as a result of the implementation of United Nations sanctions have the right to consult the Security Council. The ongoing debates surrounding the application of Article 50 and the compensation mechanisms that could be devised to that effect should considered to some extent relevant also to the issue of compensation for the adverse impacts of unilateral coercive measures.[10]

B. Remedies available under specific dispute settlement clauses in treaties

1. International Court of Justice

18. The International Court of Justice has dual jurisdiction. The Court may be called upon to consider legal issues relating to unilateral coercive measures in the exercise of both its contentious jurisdiction and its advisory jurisdiction.

Contentious jurisdiction

19. The Court may only deal with an inter-State dispute when the States concerned have recognized its jurisdiction. Therefore, no State can be a party to proceedings before the Court unless it has consented thereto.[11] Disputes between targeting and targeted States regarding the application of unilateral coercive measures would fall under the broad

[7] See General Assembly resolution 25/2625, annex.

[8] See for example, *Handbook on the Peaceful Settlement of Disputes between States* (OLA/COD/2394) (United Nations publication, Sales No. E.92.V.7), paras. 19-20.

[9] It has been argued that "when the target State is engaged in negotiations in good faith, there should be no need to resort to countermeasures, and thus countermeasures would not be permitted under the requirement of necessity. It is only when the target State refuses to cooperate in dispute settlement in good faith that countermeasures become necessary". See Y. Iwasawa and N. Iwatsuki, "Procedural Conditions" in *The Law of International Responsibility*, J. Crawford, A. Pellet and S. Olleson, eds (Oxford, Oxford University Press, 2010), p. 1153.

[10] With regard to the application of Article 50 of the Charter, see A/47/277-S/24111, para 41, in which the Secretary-General recommended that the Security Council devise a set of measures involving the financial institutions and other components of the United Nations system that can be put in place to insulate States from such difficulties. Such measures would be a matter of equity and a means of encouraging States to cooperate with decisions of the Council.

[11] See R. Mackenzie and others, *The Manual on International Courts and Tribunals*, 2nd ed. (Oxford, Oxford University Press, 2010), p. 14.

definition of international legal disputes, understood as a "disagreement on a point of law or fact, a conflict of legal views or of interests between two persons".[11] As only States may apply to and appear before the International Court of Justice,[12] international organizations, other entities and private persons are not entitled to institute proceedings before the Court. The legal standing of unrecognized States or de facto entities to apply to the Court is subject to controversy.[13] This issue may be relevant to certain sanctions regimes.

20. The jurisdiction of the Court in a contentious case brought by a targeted State against a targeting State could be based either on a dispute settlement clause or on a special agreement between the States concerned (an hypothesis a priori highly unlikely as regards sanctions) or could result from the recognition by the targeting State of the Court's compulsory jurisdiction. An example of such a treaty arguably providing for the jurisdiction of the International Court of Justice to hear a claim against the application of unilateral coercive measures is offered by the 1955 Iran-United States of America Treaty of Amity,[14] which was previously used by the Islamic Republic of Iran to institute contentious proceedings in the *Oil Platforms* case.[15]

21. According to article 38 of the Statute of the Court, it shall apply in the adjudication of disputes submitted to it, international conventions, international custom and the general principles of law, as well as judicial decisions and the teachings of the most highly qualified publicists of various nations. The Court may thus apply to a given case regarding unilateral coercive measures, human rights norms that may be relevant to the evaluation of sanctions, as briefly identified in a previous report of the Special Rapporteur.[16] There have been cases in the jurisprudence of the International Court of Justice in which the claimant State based part of its claims on the alleged violation by the respondent State of human rights norms.[17]

22. The International Court of Justice has already considered the legality of economic sanctions under public international law. Called to rule on, inter alia, the legality of acts of "economic pressure" exercised by the United States of America against Nicaragua, the Court stated that "a State is not bound to continue particular trade relations longer than it sees fit to do so, in the absence of a treaty commitment or other specific legal obligation".[18]

[11] This is the classical definition of a legal dispute set out by the Permanent Court of International Justice in *The Mavrommatis Palestine Concessions (Greece v. Great Britain)*, Judgment of 30 August 1924, P.C.I.J. Series A, No. 2, p. 11.

[12] See Statute of the International Court of Justice, art. 34 (1).

[13] On this matter, see for example, Sean D. Murphy, "International judicial bodies for resolving disputes between States" in *Oxford Handbook on International Adjudication*, Cesare Romano, Karen Alter, Yuval Shany, eds. (Oxford, Oxford University Press, 2013), pp. 185-186.

[14] See *Treaty of Amity, Economic Relations, and Consular Rights Between the United States of America and Iran*, 15 August 1955, 284 U.N.T.S. 93. On 14 June 2016, the Islamic Republic of Iran initiated proceedings before the International Court of Justice against the United States of America, alleging violation of the Treaty of Amity in relation to measures by the United States targeting Iranian entities, including the Central Bank of Iran.

[15] See *Oil Platforms (Islamic Republic of Iran v. United States of America), Judgments, I.C.J. Reports 2003*, p. 161.

[16] See A/70/345.

[17] See for example, Bruno Simma, "Human rights before the International Court of Justice: community interest coming to life?" in *The Development of International Law by the International Court of Justice*, Christian J. Tams and James Sloan, eds. (Oxford, Oxford University Press, 2013), pp. 577-603.

[18] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment of 27 June 1986, I.C.J. Reports 1986*, p. 14, para. 276; see also A/HRC/19/33, paras. 13-14.

This suggests that the freedom to impose measures restricting trade with a targeted State is circumscribed to situations where such measures would not involve a violation of existing treaty obligations. This leaves the Court much to decide upon as regards unilateral coercive measures, their legality or otherwise under public international law, and their conformity or otherwise with human rights, including an assessment of the legal significance and consequences of repeated resolutions of the General Assembly condemning recourse to unilateral coercive measures.

23. The Special Rapporteur recalls that States subject to unilateral coercive measures may verify the existence of treaties in force with the targeting State(s). Such treaties may provide a basis for the jurisdiction of the International Court of Justice in the event of a dispute regarding the interpretation or application of the treaty and could thus allow for a legal challenge of unilateral coercive measures resulting in violations of obligations set out in the relevant treaty, customary international law or relevant rules of human rights, including those forming part of *jus cogens*.

Advisory jurisdiction

24. The International Court of Justice may render an advisory opinion on any legal question at the request of any body or organ authorized by or in accordance with the Charter of the United Nations to make such a request.[20] In this regard, it should be noted that further to Article 96 of the Charter, the General Assembly or the Security Council may request the International Court of Justice to render an advisory opinion on any legal question. In advisory cases, States are not parties and there is no claimant or defendant. The Court invites States or international organizations to provide information to assist the Court in its determination of the point(s) of law at issue.

25. Despite the fact that the advisory opinions of the Court are non-binding, they are of great practical importance and could have far-reaching implications. Indeed,

> The importance of the advisory function stems from the fact that it affects the general interpretation of International Law for the international community rather than simply for the particular States or entities directly affected by an individual opinion. Thus, advisory opinions of the Court, if properly implemented cannot only guide the requesting organ but also may serve the interests of the whole international community.[21]

26. In that respect, the Special Rapporteur invites member States concerned to consider submitting to the International Court of Justice a request for an advisory opinion on the legality or otherwise of the unilateral coercive measures, especially under the angle of their compliance or otherwise with human rights norms. Such advisory opinion would be of great significance to the international community and for the advancement of the rule of law. For the General Assembly to take a decision to submit a request for an advisory opinion to the International Court of Justice on the legality or otherwise of unilateral coercive measures, a resolution adopted by a simple majority vote appears to be sufficient.[22]

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[20] On the advisory function of the International Court of Justice in general, see Mahasen M. Aloghoub, *The Advisory Function of the International Court of Justice, 1946-2005* (Berlin/New York, Springer, 2006), and Shabtai Rosenne, *The Law and Practice of the International Court, 1920-2005*, 4th ed. Vols. I-IV (Boston, Massachusetts, Nijhoff Publishers, 2006).

[21] Ibid., p. 5.

[22] The question of whether a request for an advisory opinion constituted an "important question" in the meaning of Article 18 (2) of the Charter of the United Nations, thus requiring a two-thirds majority vote in the General Assembly, seems to have been resolved by the negative, as evidenced by the uncontroversial practice following the requests to the International Court of Justice to render advisory

27. The Special Rapporteur deplores the fact that the Human Rights Council has not been authorized to request advisory opinions from the International Court of Justice although its status as a subsidiary organ of the General Assembly[22] would have warranted it. Such authorization has been given to a number of United Nations specialized agencies and main organs of the United Nations, including the Economic and Social Council.[23]

2. Inter-State arbitration

28. In addition to the International Court of Justice, a number of bilateral and multilateral treaties provide for the compulsory jurisdiction of an international arbitral tribunal in cases of dispute between the parties to the instruments with regard to the interpretation or application thereof. Such dispute settlement clauses could, in certain situations, be used to bring inter-State claims based on unilateral coercive measures that may violate some provisions of the treaty considered.[24]

3. World Trade Organization dispute settlement mechanism

29. To the extent that unilateral coercive measures imposed by a World Trade Organization (WTO) member State against another member State may arguably entail violations of the obligations set forth in the WTO agreements, the question arises as to whether recourse to the WTO Dispute Settlement Body is an option for a WTO member State faced with international sanctions.[25]

30. The State(s) affected should of course demonstrate that the measures considered contradict various provisions of the WTO agreements. It may be reasonable to think that some of the grounds for considering unilateral coercive measures unlawful under public international law would also be considered by the WTO dispute panel. Article 3.2 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes provides that the dispute settlement system of the WTO serves to preserve the rights and obligations of members under the covered agreements and to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law. In 1996, WTO Appellate Body, in *US Gasoline* stated that "the General Agreement on Tariffs and Trade is not to be read in clinical isolation from public international law".[26] Regarding the possible invocation of security exceptions (such as that

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opinions on the legal consequences of the construction of a wall in the Occupied Palestinian territory and on the accordance with international law of the unilateral declaration of independence in respect of Kosovo. See Jochen Frowein and Karin Oellers-Frahm, "Article 65", in *The Statute of the International Court of Justice: A commentary*, Andreas Zimmermann and others, eds. (Oxford: Oxford University Press, 2012), p. 1614.

[22] See General Assembly resolution 60/251.

[23] See General Assembly resolution 89 (I).

[24] See for example, the Treaty between the Federal Republic of Germany and the Republic of the Sudan concerning the Encouragement of Investments, 7 February 1963, art. 11, available at http://investmentpolicyhub.unctad.org/Download/TreatyFile/1420.

[25] The Russian Federation, WTO member since 2012, has referred to the option of bringing proceedings before the WTO Dispute Settlement Body to challenge European Union and United States sanctions against it. Russian Minister of Economic Development, Aleksey Ulyukaev, stated that the latest round of sanctions provided grounds to appeal to the WTO, and that they would appeal them: see *Russia Today*, "Russia to appeal against US, EU sanctions to WTO" (12 September 2014) available at http://rt.com/business/187432-wto-russia-sanctions-ulyukaev/; also I. Pickett and M. Lux, "Embargo as a trade defence against an embargo: the WTO compatibility of the Russian ban on imports from the EU", *Global Trade and Customs Journal*, vol. 10, No. 1 (2015), pp. 2-41.

[26] World Trade Organization, *United States – Standards for Reformulated and Conventional Gasoline*, Report of the Appellate Body, 29 April 1996 (WT/DS2/AB/R), p. 17.

set out in article XXI of the General Agreement on Tariffs and Trade[27] as a defence by States imposing sanctions, it is to be noted that the legislative history of article XXI of the General Agreement on Tariffs and Trade indicates that this provision was not meant to be excluded from the WTO dispute settlement procedures.[28] That reinforces the argument that security exceptions were not conceived of as a self-judging provision.[29] On a related note, it has also been suggested that the WTO Dispute Settlement Body could possibly be seized of a dispute carrying human rights arguments.[30]

V. Remedies available to individuals and entities affected by unilateral coercive measures

A. Domestic remedies

31. Whether individuals or entities subject to unilateral coercive measures can benefit from effective judicial review before the domestic courts of the targeting State(s) depends in the first place on the country considered. It appears that in most jurisdictions, domestic courts are unlikely to grant remedies to individuals or entities affected by unilateral coercive measures, as the courts display a significant measure of deference towards the political decisions underlying sanctions. It should also be noted that under European Union law, domestic or national courts throughout the European Union are bound to apply European Union restrictive measures.

32. There have been cases, however, in which national implementation measures of United Nations sanctions have been challenged before domestic courts. For example, in the United Kingdom of Great Britain and Northern Ireland,[31] it is unclear whether any of the applicants were awarded damages. Reportedly, a case concerning sanctions-related damages is currently pending before the British High Court of Justice. The case was brought by Bank Mellat (an Iranian bank) after the Supreme Court of the United Kingdom ruled in 2013 that the 2009 order of the Government of the United Kingdom imposing financial restrictions on the bank in the United Kingdom was unlawful.

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[27] This article allows a party to disregard its obligations under the General Agreement on Tariffs and Trade by "taking any action which it considers necessary for the protection of its essential security interests" with reference to various situations, including "in time of war or other emergency in international relations" and "in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security". The latter provision clearly refers to obligations to comply with Security Council resolutions under Chapter VII of the United Nations Charter and, as such, does not cover unilateral coercive measures.

[28] See M. J. Hahn, "Vital interests and the law of GATT: an analysis of GATT's security exception", *Michigan Journal of International Law*, vol. 12 (1991), pp. 558–567.

[29] See Mitsuo Matsushita and others, *The World Trade Organization: Law, Practice and Policy* (Oxford, Oxford University Press, 2006), p. 467.

[30] See for example G. Marceau, "WTO dispute settlement and human rights", *European Journal of International Law*, vol. 13 (2002), pp. 753–814.

[31] See for example *The Queen on the Application of Jean Georges v. Secretary of State for the Home Department* [2008] EWHC 1890, in which a member of the Government of Zimbabwe targeted by a travel ban imposed on him by Council Common Position 2007/2551/CFSP renewing restrictive measures against Zimbabwe, brought a claim for judicial review, which was dismissed by the High Court.

B. Human rights bodies

33. Within the United Nations system, there are a number of treaty-based mechanisms that potentially allow individuals to pursue claims against States based on violations of human rights.[31] Some of these mechanisms are, a priori, relevant to the situation of persons whose human rights have been infringed by unilateral coercive measures. It must, however, be emphasized that, in certain cases, such mechanisms may be unavailable because some States imposing unilateral coercive may not have ratified the relevant treaties or protocols.

34. It can be assumed that individuals whose enjoyment of human rights is adversely affected by the imposition of unilateral coercive measures could lodge complaints against the targeting State(s) with the Human Rights Committee or the Committee on Economic, Social and Cultural Rights, respectively, insofar as the targeting State(s) have ratified the Optional Protocol(s). Each Committee may consider individual communications alleging violations of any of the rights set forth in the Covenant concerned. As such, parties affected may initiate claims alleging violation of their rights pursuant to, for example, article 11 of the International Covenant on Economic, Social and Cultural Rights, which protects the right to an adequate standard of living, including food, clothing, housing and medical care and article 12 of the same Covenant, which protects the right to health.[32]

35. While anyone can lodge a complaint with the above-mentioned Committees alleging violations of rights protected under the respective Covenants, the Optional Protocols to the Covenants require that the authors of the communications must be under the jurisdiction of the State responsible for the violation (and the State must have ratified both the Covenant concerned and its Optional Protocol). It is unclear whether this requirement bars the submission of a communication against a State that has violated a protected right beyond its borders.[33]

36. However, extraterritorial application under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights should not be ruled out. Indeed, States may be bound by their obligations under the Covenant when acting extraterritorially.[34] The jurisprudence of international and regional bodies, such as the Human Rights Committee, the International Court of Justice and the European Court of Human Rights indicate that Governments can be held to account if they violate the fundamental rights of persons living outside their borders.[35]

37. In its general comment No. 15 (2002) on the right to water, for example, the Committee on Economic, Social and Cultural Rights made it clear that a State should not deprive another country of the ability to realize the right to water for persons in its jurisdiction (para. 31). The Committee has also indicated in its concluding observations on periodic reports of States parties that jurisdiction includes any territory over which a State

[31] See E/CN.4/2005/WG.23/2.

[32] See A/HRC/70/345, paras. 34-44.

[33] See Geneva Academy of International Humanitarian Law and Human Rights, "The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights", In-Brief No. 2 (Geneva, July 2013), p. 12. Available from www.geneva-academy.ch/docs/publications/The%20optional%20protocol%20to%20the%20brief%202.pdf.

[34] See C. Courtis and M. Sepúlveda, "Are extraterritorial obligations reviewable under the Optional Protocol to the ICESCR?", *Nordic Journal of Human Rights*, vol. 27, No. 1 (2009), and F. Coomans, "The extraterritorial scope of the International Covenant on Economic, Social and Cultural Rights in the work of the United Nations Committee on Economic, Social and Cultural Rights", *Human Rights Law Review*, vol. 11, No. 1 (2011).

[35] See Geneva Academy of International Humanitarian Law and Human Rights, In-Brief No. 2, pp. 12-13.

Party has geographical, functional or personal jurisdiction. The Committee may also accept communications from individuals whose rights under the Covenant have been violated and who live outside the territory of the State party that they allege to be responsible.[37]

38. Furthermore, the Human Rights Committee, in its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, asserts that every State party to the Covenant is "obligated to every other State party to comply with its undertakings under the treaty", by considering that the violation of Covenant rights by any State party requires others to call on violators to "comply with their Covenant obligations". It would therefore be reasonable to assume that compliance with obligations under the Covenant is required in relation to the implementing of unilateral coercive measures.[38]

39. It is thus reasonable to assume that, in the case of unilateral coercive measures, complaints against targeting State(s) brought by corporate persons or individuals who are nationals of or resident in targeted States may be admissible.

40. Third parties may also bring complaints on behalf of individuals with their written consent.[39] A formal complaint should include a comprehensive chronology of facts with supporting documentation, an explanation as to how the facts violate specific provisions of the Covenant concerned and an indication of the form of remedies sought.

41. It would be desirable that the general rule according to which the Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted not be applicable to claims by victims of human rights violations resulting from unilateral coercive measures imposed by another country. It should also be noted that the complaint may be rejected if it is determined that the same matter (i.e. relating to the same author, the same facts and the same substantive right(s)) is being examined by another mechanism of international investigation or settlement.[40]

42. Applicants should, however, bear in mind that, given the large number of communications submitted, there may be a delay of several years between the initial submission and the Committee's final decision. When the Committee decides that the facts before it disclose a violation by the State party, it transmits its decision to the State party and invites it to provide information, within a set time frame, on the measures taken to give

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[37] Ibid.

[38] See CCPR/C/USA/CO/4, in which the Human Rights Committee recommended that that the United States of America should interpret the International Covenant on Civil and Political Rights in good faith, in accordance with the ordinary meaning to be given to its terms in their context, including subsequent practice, and in the light of its object and purpose and review its legal position so as to acknowledge the extraterritorial application of the Covenant under certain circumstances, as outlined inter alia, in the Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant (para. 4 (a)). As regards National Security Agency surveillance that is conducted worldwide, the Committee recommended that the United States should take all necessary measures to ensure that its surveillance activities, both within and outside the United States, conformed to its obligations under the Covenant, including article 17. In particular, measures should be taken to ensure that any interference with the right to privacy complied with the principles of legality, proportionality and necessity regardless of the nationality or location of individuals whose communications were under direct surveillance (para. 22 (a)).

[39] See the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, art. 2, and E/C.12/49/3, rule 4.

[40] See the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, art. 3 (2), and the Optional Protocol to the International Covenant on Civil and Political Rights, art. 5 (2) (a).

effect to its decision and recommendations. The decisions of the Committees under the communication procedure cannot be appealed.

43. As regards remedies and redress, although a Committee may render a decision as to remedial action to be taken by the State, such as compensation to the victim(s), their decisions are not legally binding on the State. Modalities on follow-up to the Committee's recommendations are set out in the Optional Protocols to the Covenants. For example, as regards communications under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the State party concerned must submit a response within six months on the measures taken to give effect to the Committee's recommendations. The Committee may also request the State party to submit information in its subsequent periodic report on any measures taken to respond to the Committee's recommendations.[41]

44. A case relating to sanctions imposed by the United Nations was brought before the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights.[42] Two Belgian nationals, whose names were placed on the United Nations Sanctions Committee list in early 2003 at the initiative of Belgium, submitted a communication to the Committee, claiming that through its proposal to place their names on the Sanctions Committee list without "relevant information" and through the subsequent imposition of sanctions, Belgium had violated several provisions of the Covenant, including the right to a fair trial and effective remedy (arts. 2 (3) and 14) and the right to liberty of movement (art. 12). The Committee found that it was competent "to admit a communication alleging that a State party had violated rights set forth in the Covenant, regardless of the source of the obligation implemented by the State party", irrespective of the fact that the listing was effected at the request of Belgium by the Sanctions Committee further to Security Council resolution 1267. The Committee ruled that Belgium had violated the relevant rights protected under the Covenant.

45. In the light of the foregoing, the Special Rapporteur considers that the Committees established under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights are a fortiori competent to address claims relating to the legality of unilateral coercive measures and to recommend remedies for victims thereof.

Special procedures of the Human Rights Council

46. Complaints based on violations of human rights through the imposition of unilateral coercive measures may also be submitted to the special procedures of the Human Rights Council. In this context, individuals or groups subject to unilateral coercive measures may bring allegations to the attention of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights who is empowered to act on individual cases by sending communications to the State(s) concerned in order to bring alleged violations and abuses to their attention. Communications may also be addressed to other special procedures, insofar as their mandate is of relevance to aspects of infringements of human rights related to the imposition of unilateral coercive measures. However, while States are expected to be accountable for national measures that have an adverse human rights impact on their domestic population, legal considerations alone are

[41] See the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, art. 9 (3).

[42] See Communication No. 1472/2006, *Sayadi and Vinck v. Belgium*, Views adopted on 29 December 2008.

not enough to determine whether source States will accept accountability for the adverse human rights impact of unilateral coercive measures across borders.

Human Rights Council complaint procedure

47. The Human Rights Council complaint procedure is another forum that is intended to address consistent patterns of gross and reliably attested violations of all human rights and fundamental freedoms occurring in any part of the world and under any circumstances, which could arguably be a mechanism to entertain complaints related to the impact of unilateral coercive measures. The process is designed to enhance cooperation with the State concerned. Upon prima facie review of a communication, the Council transmits it to the State concerned to obtain its views and to keep the lines of communication open between the applicant, the States and the Council at every stage of the process.

C. Compensation commissions

48. Compensation commissions have been established in a number of different contexts to deal with the settlement of claims arising out of situations of conflict or massive violations of human rights. These include the Commission for Real Property Claims of Displaced Persons and Refugees, the Claims Resolution Tribunal for Dormant Accounts in Switzerland, the Property Claims Commission established under United Nations Interim Administration Mission in Kosovo regulation No. 2006/10, and the International Commission on Holocaust Era Insurance Claims.

49. The United Nations Compensation Commission is a prominent example of such a mechanism. It was established as a subsidiary organ of the Security Council with a mandate to review, decide and pay the claims for which Iraq was liable as a result of its unlawful invasion of Kuwait. The Security Council, in its resolution 687 (1991), reaffirmed that:

> Iraq, without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through the normal mechanisms, is liable under international law for any direct loss, damage — including environmental damage and the depletion of natural resources — or injury to foreign Governments, nationals and corporations, as a result of its unlawful invasion and occupation of Kuwait.

50. A similar compensation commission could probably be established for the purpose of providing compensation to victims of unilateral coercive measures. Such a compensation commission could be set up under the Security Council, or alternatively, be established by means of a multilateral convention negotiated under the auspices of the United Nations. States which have imposed unilateral coercive measures on other States could be called upon to contribute financially to such a commission.

D. Regional or international courts

European Union Courts

51. European Union sanctions — referred to in the European Union as "restrictive measures"[71] — are subject to full judicial review by the General Court, which may be appealed before the Court of Justice. This applies equally to measures taken to implement Security Council resolutions under chapter VII of the Charter of the United Nations and

[71] See Council of the European Union, Guidelines on implementation and evaluation of restrictive measures in the framework of the EU Common Foreign and Security Policy (15 June 2012).

"autonomous" European Union measures, as was made clear in the case of *Kadi and Al-Barakaat International Foundation v. Council and Commission*.[45] The courts of the European Union have developed, over time, a rich jurisprudence of cases brought by individuals or entities subject to restrictive measures and, in some cases, the applicants have actually obtained "delisting", even if the proportion of successful cases remains limited. Dozens of new actions for annulment are brought each year before the General Court.[46] Nonetheless, as was noted by Judge Allan Rosas,

> the fact that sanctions decisions are, in principle, subject to a "full" judicial control does not imply that the targeted persons or entities always, or even in most cases, succeed in obtaining the annulment of the restrictive measures. In fact, in 2015, most actions for annulment of Council decisions brought before the General Court ... were declared inadmissible or dismissed.[47]

52. The central provision governing direct actions for judicial review of European Union measures before European Union jurisdictions is article 263 of the Treaty on the Functioning of the European Union.[47] Such proceedings have to be instituted within two months of the publication of the measure, or of its notification to the plaintiff or, in the absence thereof, of the day on which it came to the knowledge of the plaintiff. As regards restrictive measures enacted under the Common Foreign and Security Policy, one important point is that article 275 of the Treaty on the Functioning of the European Union excludes, as a matter of principle, judicial review of acts relating to the Common Foreign and Security Policy.

53. However, the same article 275 provides for an exception to that principle:

> the Court shall have jurisdiction to monitor compliance with Article 40 of the Treaty on European Union and to rule on proceedings, brought in accordance with ... the conditions laid down in the fourth paragraph of Article 263 of this Treaty, reviewing the legality of decisions providing for restrictive measures against natural or legal persons adopted by the Council on the basis of Chapter 2 of Title V of the Treaty on European Union.

54. It is therefore expressly provided that the General Court and the Court of Justice shall be competent to review the legality of decisions providing for restrictive measures against natural and legal persons adopted on the basis of the Common Foreign and Security

[45] See *Kadi and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities*, C-402/05 P and C-415/05 P, Court of Justice (Grand Chamber), Judgement of 3 September 2008. In the summary of the judgment, the Court made it clear that "the Community judicature must ... in accordance with the powers conferred on it by the EC Treaty, ensure the review, in principle the full review, of the lawfulness of all Community acts in the light of the fundamental rights forming an integral part of the general principles of Community law, including review of Community measures which, like the regulation at issue, are designed to give effect to the resolutions adopted by the Security Council".

[46] In 2006, five actions for annulment of such acts were brought before the General Court, more recent figures are as follows: 93 new cases in 2011, 59 in 2012, 41 in 2013, 69 in 2014 and 55 in 2015. Much fewer cases are brought on appeal before the Court of Justice. In 2015, for instance, the Court decided seven such cases. See Allan Rosas, "EU sanctions policies: value imperialism, futile gesture politics or extravaganza of judicial control?", presentation at a seminar on European Union restrictive measures, Tallinn, 5 February 2016.

[47] Ibid.

[47] Art. 263, fourth paragraph, of the Treaty on the Functioning of the European Union provides that "any natural or legal person may ... institute proceedings against an act [of a European Union institution] addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures".

Policy. European Union restrictive measures may also be challenged indirectly through recourse to a preliminary ruling under article 267 of the Treaty on the Functioning of the European Union, when an issue relating to interpretation of European Union sanctions legislation arises in proceedings before a national court of one of the 27 European Union member States.

55. With regard to the various grounds for review, it should be noted that a restrictive measure may be annulled if the institution concerned is found to have "misused" its power or used its power for purposes other than that for which it was granted. However, a more common reason is manifest error of assessment.[45] Such a review requires that the measures be substantiated by evidence and that the evidence be accurate, reliable, consistent and sufficiently complete. A judicial review may also be conducted in relation to rights of process, that is, the right to know the reasons for a legal measure, the right to a hearing in which one's interests are restricted, protection of one's right of defence in the case of possible sanction and the right to the administration of one's affairs with due care by the European Union institutions. A review may also be requested in relation to infringement of a treaty or any rule of law relating to its application, including breach of any substantive provision of European Union law and violation of fundamental rights. It also encompasses legal principles developed by the Court of Justice, namely non-discrimination, proportionality, legal certainty and protection of legitimate expectations.[46]

56. Judicial review by the courts of the European Union does not extend, however, to a review of the general motivations underlying the political decision to implement a sanctions regime or to blacklist a person. This means that European Union political institutions have broad discretion in defining the general criteria which are to determine the scope of targeted persons, entities and activities.[47] Therefore, it appears that the European Union courts are unlikely to address the legality of European Union restrictive measures from the viewpoint of their compliance with international law, although such compliance is actually asserted by the Council of the European Council.[48]

57. Even if no precedent exists, it does not seem controversial that an action for annulment of European Union restrictive measures against a specific country could also be brought before the European Union courts by the Government of a targeted State.[49] It seems to be well established that a third State (non-member of the European Union) can bring proceedings before the General Court or the Court of Justice under article 263 of the Treaty on the Functioning of the European Union, provided that the State concerned meets the standing requirements set out in that article, i.e. that the measure complained of is of "direct concern" to it.[50]

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[45] As was the case, for example, in *Nasr Nizar Seyahian v. Council of the European Union*, T-384/11, General Court (First Chamber), Judgment of 25 November 2014.

[46] See D. Chalmers, G. Davies and G. Monti, *European Union Law*, 3rd ed. (Cambridge, United Kingdom, Cambridge University Press, 2010), p. 396; on judicial review of United Nations and European Union sanctions by the European Union courts, see for example, G. de Burca, "The European Court of Justice and the International Legal Order after *Kadi*", *Harvard International Law Journal*, vol. 51, No. 2 (2010).

[47] See Allan Rosas, "EU sanctions policies".
See Council of the European Union, Guidelines on implementation and evaluation of restrictive measures in the framework of the EU Common Foreign and Security Policy (15 June 2012), para. 9, in which it is stated that "the introduction and implementation of restrictive measures must always be in accordance with international law".

[48] Consultations at the European Court of Justice, 25 May 2016.

[49] See J. Rideau, « Recours en annulation – Conditions de recevabilité », *Jurisclasseur Europe* (Lexis Nexis, 2011), para. 71. At least one case — not related to sanctions — has been brought by a non-

58. What remains unsettled is whether individuals or entities found to have been unlawfully subject to European Union restrictive measures could be awarded damages by the European Union courts. Under article 268 of the Treaty on the Functioning of the European Union, private parties may bring action for damages before the General Court alleging a non-contractual liability of the European Union.[54] The Special Rapporteur confirmed that, to date, there has been only one decision by a European Union court granting damages to victims of wrongful restrictive measures. In this case,[55] the applicant, an Iranian company, was listed in 2011 in the restrictive measures relating to non-proliferation against the Islamic Republic of Iran. The General Court found that the Council had "manifestly erred" in listing the applicant and had not discharged its burden of proof. It found that the Council's error was "sufficiently serious" and had caused damage to the company's reputation. As such, the Court annulled the company's listing and awarded compensation for reputational harm suffered. However, the damages awarded were modest.[56]

59. Even if the judicial review of restrictive measures by European Union courts provides some form of legal remedy to affected persons and entities, and even if the scope and intensity of such judicial review appears unrivalled worldwide, some matters of concern remain. In particular, the practice of "relisting" delisted individuals or entities on other grounds, which is widely applied by the Council of the European Union, appears to the Special Rapporteur as a challenge to the authority of the European Union courts. Moreover, the pressure put on the courts by some States that have publicly criticized the delisting jurisprudence is a cause for concern.[57] In the same way, the Special Rapporteur notes that uncertainties as to the possibility of actually obtaining compensation for damages as a result of unlawful restrictive measures from the courts are a significant limitation to the effectiveness of remedies for victims of unlawful restrictive measures in the European Union legal system.

European Court of Human Rights

60. The European Court of Human Rights is competent to adjudicate on cases brought by individuals or legal entities for violations of the Convention for the Protection of Human Rights and Fundamental Freedoms.[58]

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member of the European Union against the European Commission before the General Court: see *Swiss Confederation v. European Commission*, C-547/10P, General Court (Third Chamber), Judgment of 7 March 2013.

[54] See A. Rosas, "Counter-terrorism and the rule of law: issues of judicial control", in *Counter-terrorism: International Law and Practice*, A.M. Salinas de Frias, K.L.H. Samuel and N.D. White eds. (Oxford, Oxford University Press, 2012), p. 91.

[55] See *Safa Nicu Sepahan v. Council of the European Union*, T-384/11, General Court (First Chamber), Judgment of 25 November 2014. This case is currently under appeal before the Court of Justice (C-45/15 P). A few other cases in which delisted persons or entities are seeking damages are currently pending before the General Court.

[56] In this case, Safa Nicu Sepahan Co. claimed €7.66 million plus interest, including €2 million in damages for harm to its reputation; however, the Court awarded only €50,000 as compensation for reputational damage.

[57] Judge Allan Rosas noted that "it is true that the case law [of EU courts] has caused some consternation and concern among the Council and the Commission and some [EU] member States fearing that this judicial control would undermine the efficiency of EU sanctions": see Allan Rosas, "EU sanctions policies".

[58] The European Convention on Human Rights was adopted in Rome on 4 November 1950 and entered into force on 3 September 1953. All 47 member States of the Council of Europe have ratified the Convention.

61. The Court is seized of a matter by means of individual applications from persons or entities claiming to be victims of a violation of the Convention or one of the Protocols thereto.[57] However, the Court may only consider a matter after all domestic remedies have been exhausted, according to the generally recognized rules of international law, and within a period of six months from the date on which the final decision was taken.[58] Furthermore, the Court does not consider applications that are "substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information".[59] The judgments of the Court are binding on the States parties to the Convention.[60]

62. The Court may award damages to the applicant, that is "afford just satisfaction to the injured party", if it "finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made".[61] However, it has been observed that "the European Court's primary remedy is a declaration that there has been a violation of the Convention" and the Court has been known not to award damages, "on the basis that its finding of a violation of the Convention is 'sufficient' just satisfaction".[62]

63. There have been a few cases related to restrictive measures that have been adjudicated by the European Court of Human Rights. In the case of *Bosphorus Hava Yollari Turizm ve Ticaret Anonim Sirket v. Ireland*, which concerned measures taken by Ireland in pursuance of European Union decisions taken to implement Security Council sanctions in respect of the former Yugoslavia, Ireland had impounded an aircraft leased by the national airline of the former Yugoslavia to a Turkish company in compliance with the restrictive measures regime targeting the former Yugoslavia. The Court found that the measure was an act of compliance by Ireland with its legal obligations under Community law. It took the view that "State action taken in compliance with such legal obligations is justified as long as the relevant organization is considered to protect fundamental rights, as regards both the substantive guarantees offered and the mechanisms controlling their observance, in a manner which can be considered at least equivalent to that for which the Convention provides".[63] The Court found that the protection of fundamental rights by Community law could be considered to be "equivalent" to that of the European Convention on Human Rights system, and consequently found that Ireland "did not depart from the requirements of the Convention when it implemented legal obligations flowing from its membership of the European Community".[64] It therefore concluded that Ireland's actions did not give rise to a violation of article 1 of Protocol No. 1 to the Convention, in relation to property rights.

64. In the case of *Nada v. Switzerland*, an Italian and Egyptian national claimed that the ban on entering or transiting through Switzerland, which had been imposed on him as a result of the inclusion of his name in the list annexed to the Federal Taliban Ordinance of the Swiss Government had violated various provisions of the European Convention on Human Rights, including his right to liberty (art. 5) and his right to respect for private and

[57] See European Convention on Human Rights, art. 34.
[58] Ibid., art. 35 (1).
[59] Ibid., art. 35 (2) (b).
[60] Ibid., art. 46 (1).
[61] Ibid., art. 41.
[62] Philip Leach, *Taking a Case to the European Court of Human Rights* (Oxford, Oxford University Press, 2011) 465–467.
[63] See *Bosphorus Hava Yollari Turizm ve Ticaret Anonim Sirket v. Ireland*, Application No. 45036/98, European Court of Human Rights (Grand Chamber), Judgement of 30 June 2005, para. 155.
[64] Ibid., para. 165.

family life, honour and reputation (art. 8). The Court found violations of articles 8 and 13 (right to an effective remedy) of the Convention. It stressed that, under Swiss law, no effective remedy by which to complain of the breaches of rights guaranteed by the Convention was available, since, even if the applicant was able to apply to the national authorities to have his name deleted from the list annexed to the Federal Taliban Ordinance, "those authorities did not examine on the merits his complaints concerning the alleged violations of the Convention. In particular, the Swiss Federal Court took the view that, whilst it could verify whether Switzerland was bound by the Security Council resolutions, it could not lift the sanctions imposed on the applicant on the ground that they did not respect human rights".[57] The Court explicitly referred in that regard to the finding of the Court of Justice of the European Union in the *Kadi* case that it was not a consequence of the principles governing the international legal order under the United Nations that any judicial review of the internal lawfulness of the contested regulation in the light of fundamental freedoms was excluded by virtue of the fact that that measure was intended to give effect to a resolution of the Security Council adopted under Chapter VII of the Charter of the United Nations.[58] It expressed the opinion that "the same reasoning must be applied, mutatis mutandis, to the present case, more specifically to the review by the Swiss authorities of the conformity of the Federal Taliban Ordinance with the Convention" and found that "there was nothing in the Security Council Resolutions to prevent the Swiss authorities from introducing mechanisms to verify the measures taken at national level pursuant to those Resolutions". In this case, the applicant's claim for "just satisfaction" in the form of damages under article 41 of the European Convention on Human Rights was dismissed.

65. The case of *Al-Dulimi and Montana Management Inc. v. Switzerland* was brought by Khalat M. Al-Dulimi claiming that his right of access to a court guaranteed by article 6 of the European Convention on Human Rights had been violated by the Swiss authorities, which had refused to seek adjudication on his claim that his and his company's assets had been unlawfully frozen and confiscated by the Swiss authorities. The position of the Swiss Government was that the Swiss courts could not adjudicate because Switzerland had no discretionary powers and had to implement Security Council resolution 1483 and freeze the assets of persons connected with the Government of Iraq. The European Court of Human Rights held that this was a disproportionate restriction of Mr. Al-Dulimi's right under article 6 of the Convention, because neither the Security Council nor the Swiss courts were providing him with access to effective judicial review, which was essential, given the considerable restriction of freezing (since 1990) and confiscating (since 2006) his assets. The similarity between this and the *Kadi* case is obvious and it is noteworthy that the European Court observed that there was no Ombudsperson for the sanctions list related to Security Council resolution 1483 (as there is, as a result of the *Kadi* case, for the list relating to Security Council sanctions under Chapter VII of the Charter of the United Nations) and stressed that "for as long as there is no independent and effective judicial review, at the level of the United Nations, of the legitimacy of adding individuals and entities to the relevant lists, it is essential that such individuals and entities should be authorized to request the review by the national courts of any measure adopted pursuant to the sanctions regime".[59] However, the claim in respect of damages was dismissed.

66. One important potential limitation regarding the jurisdiction of the European Court of Human Rights is that the European Convention on Human Rights extends the obligation

[57] See *Nada v. Switzerland*, para. 210.

[58] Ibid., para. 212; also *Kadi and Al Barakaat International Foundation v. Council and Commission*, para. 299.

[59] See *Al-Dulimi and Montana Management v. Switzerland*, Application No. 5809/08, European Court of Human Rights (Second Section), Judgement of 26 November 2013, para. 134.

of its contracting parties to respect human rights to "everyone within their jurisdiction".[70] As a matter of fact, all of the three cases reviewed above concerned the effects of sanctions on persons or entities residing in a State party to the Convention. Although the jurisprudence of the Court has extended the extraterritorial application of its provisions,[71] it still seems to require that the State alleged to have violated the provisions of the Convention exercise some form of "effective control" over the territory where the applicant resides. It is thus still unclear and unsettled, to the Special Rapporteur at least, whether the European Court of Human Rights has jurisdiction to address claims of violations of the European Convention on Human Rights in relation to the adverse impacts of unilateral coercive measures imposed by member States of the Council of Europe on the human rights of persons or groups living in third countries.[72]

VI. Conclusion and recommendations

67. **Based on the review of existing mechanisms that have actually been used (or could arguably be used) to claim for damages for the adverse effects of sanctions, it appears that such mechanisms are generally few and that their powers to grant actually effective remedies and damages, including compensation and redress, are most often limited. Prima facie, for targeted individuals or private entities, the main, if not only, functioning and available legal mechanisms seem to be the courts of the European Union and the European Court of Human Rights. However, these institutions, themselves, seem to have limited ability, or willingness, to grant effective compensation to victims of violations of human rights owing to sanctions.**

68. **In each situation worldwide, where unilateral coercive measures are found to have a negative impact on human rights, the right to a remedy should be effectively available and be protected, and appropriate mechanisms at the national or international level should be available for the victims to obtain remedies, compensation and redress. It is not acceptable that the populations of a large number of States should be deprived of access to any forum or mechanism through which they could seek remedies, compensation and redress. The lack of such mechanisms contravenes some of the basic obligations enshrined in most human rights treaties.**

69. **The Human Rights Council and the General Assembly should be called upon to restate in a solemn manner, through a declaration, the right of victims to an effective remedy, including appropriate and effective financial compensation, in all situations where their human rights are affected by unilateral coercive measures.**

70. **States whose populations are affected by unilateral coercive measures should consider the jurisdictional options available to them by virtue of treaties in force, including the contentious jurisdiction of the International Court of Justice, or other available forums to challenge the legality and application of such measures with respect to international law, including human rights law.**

[70] See European Convention on Human Rights, art. 1.

[71] The European Court of Human Rights has acknowledged that "the concept of 'jurisdiction' [under] the Convention is not restricted to the national territory of the High Contracting Parties. In exceptional circumstances the acts of Contracting States performed outside their territory or which produced effects there, might amount to exercise by them of their jurisdiction." See *Issa and Others v. Turkey*, Application No. 31821/96, European Court of Human Rights (Second Section), Judgment of 16 November 2004, para 68.

[72] Consultations at the European Court of Human Rights, 15 June 2016.

71. States should consider the opportunity of submitting to the International Court of Justice a request for an advisory opinion on the legality of unilateral coercive measures. An advisory opinion clarifying the status of unilateral coercive measures that do have adverse human rights impacts on innocent people in contemporary international law (including international human rights law) and its relationship to collective punishment would be of great significance to the international community and the advancement of the rule of law.

72. The United Nations mechanisms overseeing the implementation of United Nations human rights treaties, in particular the Committees established under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, should be reinforced and their competence to address human rights violations resulting from the imposition of unilateral coercive measures, irrespective of the location of the victim or the perpetrator, should be reaffirmed.

73. The principle of accountability could be upheld by including in the universal periodic review of each source State an item on the unilateral coercive measures that they apply to targeted countries with an assessment of their human rights impact.

74. The establishment of an appropriate mechanism to enable persons affected by unilateral coercive measures to seek remedies, compensation and redress at the United Nations level should be considered. Such a mechanism could take the form of a compensation commission set up by the Security Council. Alternatively, the mechanism could be set up by means of a multilateral convention, negotiated under the auspices of the United Nations, to which States would be invited to adhere and which would provide a forum through which individuals and entities affected by unilateral coercive measures could bring direct claims against targeting States or international organizations. Such a compensation commission could be called upon to review and adjudicate claims relating to human rights violations arising from the imposition of sanctions or it could rely on the findings of the Human Rights Committee and Committee on Economic, Social and Cultural Rights.

75. Alternatively, the possibility of adopting the format of the World Trade Organization Dispute Settlement Body could be reviewed in order to set up an adjudicatory body to address requests for compensation and reparation related to human rights violations resulting from the implementation of unilateral coercive measures.

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Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, on his mission to the Sudan

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights on his official visit to the Sudan from 23 to 30 November 2015. The focus of his visit was on the negative impact that unilateral coercive measures imposed by States or groups of States may have on the rights that the Special Rapporteur identified in his reports to the Human Rights Council (A/HRC/30/45) and the General Assembly (A/70/345).

During his visit, the Special Rapporteur met with a wide range of high-ranking government officials, businessmen, academics and representatives of United Nations agencies and civil society.

In the present report, the Special Rapporteur gives an overview of the unilateral coercive measures imposed on the Sudan and their impact on the enjoyment of basic human rights. Then reviews the options to address the related challenges. On that basis, the Special Rapporteur addresses his recommendations to the Sudan, source countries, the United Nations system and other stakeholders. He proposes a step-by-step approach to removing unilateral coercive measures, starting with those with the most severe impact on the enjoyment of human rights. In the meantime, the mandate holder would use quiet diplomacy to facilitate channels of communications between source and target countries to build a common ground.

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Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, on his mission to the Sudan

I. Introduction

1. The Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Idriss Jazairy, undertook an official visit to the Sudan from 23 to 30 November 2015 to assess the negative impact that unilateral coercive measures imposed by States or group of States have on the ground.

2. During his visit, the Special Rapporteur met the Vice President of the Republic, the Minister for Foreign Affairs, the Minister for Justice, the Minister for Finance and the National Economy, the Minister for Industry, the Minister for Petroleum and Gas, the Minister for Health, the Minister for Culture, the Minister for Labour and Administrative Reform, the Minister for Infrastructure and Transport for Khartoum and the State Minister for Communications. He also met with senior officials of the ministries of trade, transport, education and higher education, water resources, roads and bridges, and social security. The Special Rapporteur was also received by the President of the National Assembly and by a number of leaders from different political parties and social movements. He held a meeting with members of the National Commission for Human Rights and with the heads of national institutions responsible for the El Gezira project, the National Medicines and Poisons Board, the Khartoum Radiation and Isotopes Centre, the Khartoum breast care centre and the Gum Arabic Centre.

3. The Special Rapporteur held consultations with representatives of the Sudanese employers' union and the Sudanese American Business Council. He also met with representatives of civil society organizations, the Sudanese trade union, and experts and academics.

4. The Special Rapporteur also met with the Resident Coordinator of the United Nations in Khartoum and representatives of other United Nations agencies concerned. In addition, he consulted different diplomatic representatives of States from Europe, Asia, Africa and the Americas, and of regional organizations. He was not able to meet with the representative of the United States of America in Khartoum. Nonetheless, the information on unilateral coercive measures taken by the United States against the Sudan has been shared for factual correction with the Permanent Mission of the United States to the United Nations Office at Geneva, which provided some comments and observations on 22 July 2016.

5. The Special Rapporteur expresses his gratitude to the Government of the Sudan for its invitation and the support provided throughout the visit. He also thanks the Resident Coordinator of the United Nations in Khartoum and her staff for their invaluable cooperation and assistance.

II. Overview of coercive measures in force against the Sudan

6. The Sudan is currently subject to different kinds of international sanctions; although some have been imposed by the Security Council and are therefore beyond the scope of the mandate of the Special Rapporteur. Their characteristics will be recalled briefly in order to

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provide a full picture of the current situation. Other sanctions against the Sudan qualify as unilateral coercive measures. Even though most have been imposed by the United States of America and Canada, they have de facto been applied by the European Union and a number of financial institutions and other businesses based in other countries and that have dealings with the United States. The penalties applied on 30 June 2014 by the Department of the Treasury of the United States against the French bank BNP Paribas for non-compliance with American legislation concerning unilateral coercive measures against the Sudan, through an internationalization of internal legislation, have had a further chilling effect on the business partners of the Sudan.[1] As a result, the Sudan is now de facto under global and comprehensive unilateral coercive measures, which have an adverse impact on all segments of the population, in particular the most vulnerable, such as women, children and the ill (especially those suffering from diabetes and cancer).

A. Security Council sanctions

7. The Security Council imposed sanctions on the Sudan in 1996 and 2004. In 1996, the Council, in its resolution 1044 (1996), imposed a reduction of number and level of staff at Sudanese diplomatic missions and consular posts, and restrictions or control of movement on the remaining staff. It also imposed travel restrictions on members of the Government of the Sudan, government officials and members of the Sudanese armed forces. The Council also called upon all international and regional organizations not to convene any conference in the Sudan. Later in 1996, the Council, in its resolution 1070 (1996), imposed an aviation ban on aircraft registered in the Sudan or owned, leased or operated by, or on behalf of Sudan Airways, the Government or the public authorities of the Sudan. In 2001, in its resolution 1372 (2001), the Council revoked diplomatic sanctions and the aviation ban.

8. In 2004, the Security Council began to introduce an arms embargo on the Sudan[2] and also to take other targeted measures (such as a travel ban and an assets freeze on certain individuals).[3]

9. At present, four individuals appear on the list compiled by the Security Council Committee established pursuant to resolution 1591 (2005) concerning the Sudan: two senior officers of the Sudanese armed forces (one retired), one tribal chief and one senior member of a political party. No entity is currently listed.

B. Unilateral coercive measures imposed by the United States of America

10. The United States of America has by far the broadest sanctions regime against the Sudan in the world. Since 1997, it has maintained economic sanctions against the Sudan under the International Emergency Economic Powers Act. The alleged acts triggering the measures include the policies and actions of the Government of the Sudan, "including support for international terrorism", "efforts to destabilize neighbouring Governments, and

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[1] The text of the Settlement Agreement between the Office of Foreign Assets Control of the United States Treasury and BNP Paribas dated 30 June 2014 is available from https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20140630_bnp_settlement.pdf.

[2] See Graduate Institute Geneva, SanctionsApp (available from www.sanctionsapp.com).

[3] See Security Council resolutions 1556 (2004), 1564 (2004), 1590 (2005), 1591 (2005), 1593 (2005), 1651 (2005), 1665 (2006), 1672 (2006), 1706 (2006), 1713 (2006), 1779 (2007), 1841 (2008), 1891 (2009), 1945 (2010), 1982 (2011), 2035 (2012), 2091 (2013), 2138 (2014) and 2200 (2015).

involvement in pervasive human rights violations". According to the Office of Foreign Assets Control, the ultimate objective of sanctions is "behavioral change".[3]

11. The sanctions "programme" against the Sudan began in 1997, when President Clinton issued Executive Order 13067, which imposed a comprehensive trade embargo on the Sudan and froze the assets of the Government. In 2006, President Bush expanded the scope of the sanctions in Executive Order 13400, which targeted those involved in the conflict in Darfur. Later that year, the President issued Executive Order 13412, which exempted the regional Government of Southern Sudan and certain specified areas from most of the prohibitions imposed by the sanctions regime. Following the independence of South Sudan in July 2011, the Office of Foreign Assets Control authorized all activities relating to the petroleum and petrochemical industries in South Sudan, to the extent they were otherwise prohibited, and the transshipment of goods, technology and services through the Sudan to or from South Sudan.[4]

12. The most significant unilateral coercive measures targeting the Sudan therefore comprise the blocking of properties of the Government of the Sudan, and a trade embargo. Pursuant to Executive Orders 13067 and 13412, all property and interests in property of the Government of the Sudan have been frozen. They also prohibit, with certain exceptions:

- The importation of goods or services of Sudanese origin
- The exportation or re-exportation to the Sudan of goods, technology or services from the United States or by a United States person[5]
- The facilitation by a United States person of the exportation or re-exportation of goods, technology or services from the Sudan to any destination or to the Sudan from any location
- The performance by a United States person of any contract in support of an industrial, commercial or public utility, or governmental project, in the Sudan
- The grant or extension of credits or loans by a United States person to the Government of the Sudan
- Certain transactions relating to cargo to or from the Sudan
- All transactions by United States persons relating to the petroleum or petrochemical industries in the Sudan, including oilfield services and oil or gas pipelines

13. In addition, the United States applies sanctions targeted against individuals and entities considered having contributed to the conflict in the Darfur region. To the extent that these measures apply to the individuals designated by the Security Council Committee established pursuant to resolution 1591 (2005), they qualify as implementation measures of Security Council resolutions, not as unilateral coercive measures. It should be noted, however, that, pursuant to Executive Order 13400, the United States Secretary of the Treasury is empowered to make additional designations, after consultation with the Secretary of State, of persons deemed:

(a) To have constituted a threat to the peace process in Darfur;

[3] Office of Foreign Assets Control, Effectiveness of U.S. Economic Sanctions with respect to Sudan: report to Congress, January 2009, p. 7.

[4] Office of Foreign Assets Control, Sudan sanctions program, 5 November 2013.

[5] According to Executive Order 13412, "the term 'United States person' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States."

(b) To have constituted a threat to stability in Darfur and the region;

(c) Responsible for conduct relating to the conflict in Darfur that violates international law;

(d) Responsible for heinous conduct with respect to human life or limb in the context of the conflict in Darfur;

(e) To have directly or indirectly supplied, sold or transferred arms or any related materiel, or given any assistance, advice or training relating to military activities to:

(i) The Government of the Sudan;

(ii) The Sudan Liberation Movement/Army;

(iii) The Justice and Equality Movement;

(iv) The Janjaweed;

(v) Any person operating in the States of North Darfur, South Darfur or West Darfur that is a belligerent, a non-governmental entity or an individual;

(f) Responsible for offensive military overflights in and over the Darfur region;

(g) To have materially assisted, sponsored or provided financial, material or technological support for, or goods or services in support of, the activities described in subparagraph (a) to (f) above or any person listed in or designated pursuant to this order;

(h) To be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person listed in or designated pursuant to the order.

14. To the extent that additional designations are made "autonomously" by United States authorities pursuant to Executive Order 13400, they qualify as unilateral coercive measures given that they have not been mandated by the Security Council. Dozens of such entities and individuals are apparently listed by the Office of Foreign Assets Control in its Specially Designated Nationals and Blocked Persons Lists, marked "Darfur" or "Sudan".

15. Certain types of activities and transactions are exempt from the prohibition of the sanctions regime and the executive orders, such as the donation of articles intended to relieve human suffering (for example, food, clothing or medicine). The importation from and exportation to the Sudan of information or informational materials, whether commercial or otherwise, and regardless of format or medium of transmission, are also exempt from the prohibitions and regulations. In addition, some "specified areas" of the Sudan, namely Southern Kordofan State (Nuba Mountains), Blue Nile State, Abyei, Darfur, and some areas in and around Khartoum that the United States defines as "marginalized", are exempt from most United States sanctions. The Department of the Treasury of the United States also grants some "general licenses", one of which allows United States citizens to export food products to these "specified areas" under certain conditions.

16. After the visit of the Special Rapporteur to the Sudan, the Department of the Treasury, in consultation and coordination with the Departments of State and Commerce, issued an amended general license relating to the exportation, re-exportation and provision to the Sudan of certain hardware, software and services incident to personal communications, effective 18 February 2016.

C. Unilateral coercive measures imposed by other States and organizations

1. Canada

17. In addition to domestic implementation measures of the sanctions mandated by the Security Council, Canada currently applies a number of unilateral coercive measures targeting the Sudan "in response to the government's role in the country's conflicts, and in support of Canada's policy in this country".[7] The measures include withholding commercial support services, such as export finance and trade and investment development activities, and Government-to-Government development cooperation.[8]

2. European Union

18. Although the European Union imposes its own sanctions to a number of States, subject to review at regular intervals and adjusted as deemed necessary, in accordance with developments affecting the stated objectives and the effectiveness of the measures,[9] it does not at present impose unilateral coercive measures on the Sudan. Nonetheless, firms based in the European Union with business relations with the United States comply systematically with the unilateral coercive measures imposed by the United States against the Sudan.

19. The European Union is currently negotiating an economic partnership agreement with a number of Eastern African States, including the Sudan. This group of States does not recognize the applicability of American domestic law concerning unilateral coercive measure to European firms; nonetheless, the European Union has not been able to protect the firms from the huge fines imposed, in particular on the banking sector, for conducting business relations with Sudanese partners. With regard to sanctions, the European Union officially implements, through instruments of European law, only Security Council resolution 1591 (2005) and subsequent relevant resolutions, which provide for an arms embargo, a travel ban and the freezing of assets of certain individuals "of concern" designated by the Council. The travel bans enforced by the European Union - preventing entry to or transit through the territory of member States of listed individuals - and the asset freeze currently concern only the four individuals listed by the Security Council Committee established pursuant to resolution 1591 (2005).

3. Other States

20. Through a review of open-source information on unilateral coercive measures imposed by the "source countries" most active in their application, the Special Rapporteur has identified a large number of firms from most countries in the world (other than the United States of America and Canada), including Arab States that are members of the Gulf Cooperation Council and the Bank of China, that refuse to honour letters of credit issued by the Sudan. Such a situation is understandable for letters of credit in United States dollars, but less clear when payments are made in other currencies. This unfortunate situation is not necessarily a result of the adoption of legal provisions to apply unilateral coercive measures against the Sudan, but to avoid major penalties imposed by the Department of the Treasury

[7] Embassy of Canada to Sudan, Canada-Sudan relations, 13 April 2015.

[8] Global Affairs Canada, Canadian Sanctions related to Sudan, 18 April 2016.

[9] See European Union External Action, Common Foreign and Security Policy, sanctions policy, at http://eeas.europa.eu/cfsp/sanctions/index_en.htm.

of the United States. The cases of BNP Paribas, which was fined $6.4 billion, Crédit Agricole, $787 million, and Commerzbank, $1.45 billion, stand as a deterrent for all banks worldwide today. Most feel an excessive sense of vulnerability, while the European Union officially protects firms headquartered in Europe against the effects of the extraterritorial application of legislation adopted by a third country [10] it has not protected its own banks when they were sanctioned by the Department of the Treasury for conducting dealings with countries or entities subject to United States sanctions.[11] The result has been the generalization of unilateral coercive measures initially imposed by the United States to all international firms with business interests in the United States. It has even led to cases of over-compliance, whereby firms shun association with the Sudan even for operations considered to be legal or legitimate by the source country.

III. Assessment of the adverse impact of unilateral coercive measures on human rights in the Sudan

21. While preparing his visit and drafting the present report, the Special Rapporteur regretted the lack of updated information on the impact of unilateral coercive measures on human rights in the Sudan. The national household survey, which would have provided valuable information, had to be postponed because the African Development Bank was unable to clear aid transfers to the Sudan for the purposes of conducting the survey.

22. As explained above, unilateral coercive measures targeting the Sudan restrict trade and investment in the country, which in turn forces the population to face enormous challenges to their enjoyment of human rights. Coercive measures affect the right to health and an adequate standard of living, the right to food, the right to education and the right to development.

23. The Special Rapporteur learned from reports that the components of health services most affected are the units of emergency and epidemic response, owing to the lack of vaccines and drugs for the prevention and treatment of infectious diseases. The lack of logistical assistance and technical support, lack of medical equipment and even of computer programmes and components for medical diagnostics are just a few examples of the challenges that the Sudan is facing.

24. The sanctions regime targeting the Sudan include exemptions and general licenses for the health and agricultural sector; however, the exemptions become ineffective when financial transactions with the banking system in the Sudan are prohibited.

25. Sanctions enacted by the United States also affect the right to education. The Special Rapporteur was informed in March 2016 by the Permanent Mission of the Sudan that citizens are deprived of scholarship opportunities and of software and other technology, which would allow them to improve and update resources for teaching and learning.

26. The main negative effect of coercive measures is evident in the case of the right to development, given that the Sudan is deprived of advanced technology and spare parts, which has led to the deterioration of key industries, such as electricity, textile and oil. It has

[10] Council Regulation (EC) No. 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom. See Jurgen Huber, "The Helms-Burton Blocking Statute of the European Union", *Fordham International Law Journal*, vol. 20, 1996, pp. 699–716.

[11] See for example Pierre-Emmanuel Dupont and Regis Bismuth, "The doubtful legality of U.S. extraterritorial sanctions applied to European financial institutions", *Revue internationale des services financiers / International Review of Financial Services*, vol. 1, 2015, pp. 104–108.

also left the State unable to increase the efficiency of exploration, extraction and refining, which has in turn led to higher prices for materials, equipment and machinery used in mining operations.

27. Furthermore, unilateral coercive measures have compounded external debt and affected the realization of development projects, a situation that has resulted in higher costs of living and consequently, higher rates of poverty, while also undermining the ability of the State to address global financial markets.

28. During broad-based consultations held by the Special Rapporteur, all Sudanese partners mentioned agreed on the ineffectiveness of the unilateral coercive measures targeting the Sudan, unchanged for nearly 20 years, and on the need to either lift them or review their content.

29. In this regard, it should be noted that, the Security Council now avoids resorting to comprehensive sanctions in the light of their unintended negative impact on important segments of the population of targeted countries. Given the woeful human rights impact of undiscriminating measures entailed in comprehensive sanctions, the Council has come to resort to sanctions that must be targeted against specific sectors or persons "of concern".

30. Unfortunately, the unilateral coercive measures targeting the Sudan have not followed this trend, given that they have been applied for more than two decades, without any adjustment to the change in the internal context, in recognition of the fact that the situation of 1997 is completely different to the current one.

31. The measures applied to the Sudan have not changed, even after the signing of the Comprehensive Peace Agreement in 2005, nor since the start of the national dialogue; in the meantime, the impact of the measures has fluctuated erratically.

32. The impact of unilateral measures may fluctuate; for example, it became less severe after 2000 following the discovery of oil and consequently the increasing resources available to the Government. It then became heavier when the State lost 75 per cent of oil revenue following the secession of South Sudan and the drop in oil prices. The impact of the measures became even more severe when Crédit Agricole, BNP Paribas and Commerzbank were charged penalties by the source country, leading to a globalization of its restrictions.

33. This all resulted in a stifling embargo on the economy and on Sudanese financial transactions as a result of the interruption of most financial relations of the outside world with the Sudan, at a time when the internal situation in the Sudan was resilient, despite the negative impact of the measures taken against it. The effect of the coercive measures applied therefore ran counter to their proclaimed objectives.

34. The reality on the ground has shown that unilateral coercive measures do not have a significant negative impact on officials or on any elite group, but rather on innocent citizens, causing also a deepening of the gap in income distribution within Sudanese society and among the provinces. The black market has broadened, while the State has broken away from the official control of financial transactions. The emergence of a parallel economy, exposed to a variety of possible illegal practices, has thus been encouraged.

35. While in some sectors it is possible to assess the negative impact of unilateral coercive measures on the enjoyment of human rights in the Sudan, such as health, where impact is clear and unambiguous, in other sectors it may be more difficult to identify the extent of impact separately from other causes of the denial of human rights. The situation has been exacerbated by the continual postponement of the national household survey, which has not been conducted since 2009. Some donor countries complained to the Special Rapporteur that this was due to a lack of responsiveness to the requirements of international financial institutions by the Sudan because of its reluctance to let it be known that the

denial of human rights was mainly due to internal policy shortcomings. On further investigation, however, it emerged that the African Development Bank had set aside some funding for the second and third rounds of data collection for the survey but that transfer restrictions caused by the unilateral coercive measures imposed on the Sudan prevented the bank from disposing of the funds in Khartoum. Ultimately, the Minister for Finance had to draw on contingency funds in the national budget to proceed with the survey.

36. To avoid politicization of the debate over the distinction between causality and correlation in the Sudan, additional studies and more detailed observations are needed.

Observations

37. As mentioned above, the Security Council avoids resorting to comprehensive sanctions because of their catastrophic impact on the enjoyment of human rights, as seen in the cases of Haiti and Iraq. Given their global and comprehensive nature, the unilateral coercive measures targeting the Sudan have not followed the practice of the Council in this regard. In fact, the measures imposed on the Sudan are the last major set of such measures to be still applied at the international level today.

38. In human rights law, the rights most relevant to assessing the legality of economic measures include the right to life,[9] the right to an adequate standard of living, including food, clothing, housing and medical care,[10] the right to freedom from hunger[11] and the right to health.[12] Although the United States of America claims that the sanctions do not apply to health, education and agriculture, they have deeply affected the delivery and availability of medical supplies. The right to education is affected by the freeze on professional exchanges and the lack of access to software and modern technologies. The reduction in agricultural production and productivity as a result of the de facto embargo has had a negative impact on the right to food. The right to life and the right to health have been affected by the lack of access to obtain spare parts for life-saving drugs and equipment. Although the sectors affected are not officially under embargo, financial and transport constraints, and over-compliance by suppliers, make it impossible for the exceptions allowed by the United States to become effective. The Sudan has thus become one of the few countries in the world where people still die from diabetes, given that the drugs required to treat it are only produced by two countries, which are participating in the de facto embargo. The United States might therefore consider removing these barriers to humanitarian supplies, including medicines and food.

39. The right to health has also been affected by the lack of access to equipment for radiation treatment, which is needed in 50 per cent of cases of cancer. The standard requirement of such equipment is three to four units per million of population; with a population of 30 million, the Sudan should therefore have at least 100 units. Because of unilateral coercive measures, however, it has only eight units, of which four are not operational. Furthermore, the units currently used ("cobalt 60") have now been superseded by Linac linear treatment units, which target growths better and reduce side effects. Units

[9] Universal Declaration of Human Rights, art. 3; International Covenant on Civil and Political Rights, art. 6, para. 1.

[10] Universal Declaration of Human Rights, art. 25, para. 1; International Covenant on Economic, Social and Cultural Rights, art. 11, para. 1.

[11] International Covenant on Economic, Social and Cultural Rights, art. 11, para. 2.

[12] See general comment No. 8 (1997) of the Committee on Economic, Social and Cultural Rights on the relationship between economic sanctions and respect for economic, social and cultural rights (E/C.12/1997/8), para. 3.

of this type are nowhere to be found in the Sudan. Hardly a third of new cases of cancer can receive proper radiation treatment, either because it has been interrupted or is unavailable. At the Khartoum Radiation and Isotopes Centre, evidence was provided - corroborated also by other treatment centres - that the supply of spare parts, radiation material and technical assistance for machines purchased from European firms, subsequently taken over by United States companies, had been interrupted. Deaths resulting from the export or transfer ban of such life-saving equipment by the source country and its foreign affiliates over the period from 1997 to 2014 were estimated by the Centre to have exceeded 8,000, of which the majority were women. Like the United States Congress delegation that had visited the country previously, the Special Rapporteur expressed his amazement and admiration for the commitment shown by a Sudanese radiologist who had launched, with her own savings, a state-of-the-art centre in Khartoum breast care centre. The centre was equipped with a General Electric monogram machine, the only such machine available in the Sudan. The Special Rapporteur was informed that, for 18 months after 2013, the centre had struggled to obtain spare parts for the machine, denied by the supplier because of the embargo. Many cancer patients reportedly died owing to lack of treatment before the clearance for the delivery of the spare parts was obtained.

40. Avoidable loss of life has also resulted from the spread of malaria, bilharzia and leishmaniasis because transfers via SWIFT were not authorized to pay for the importation of drugs and vaccines, and the fact that the Sudan was not eligible to benefit from the United States President's Emergency Plan for AIDS Relief, the second-most important source of funding after the Global Fund to Fight AIDS, Tuberculosis and Malaria.

41. The right to development has been affected also, given that the importation of spare parts for basic equipment, such as for trains, airplanes and road transport vehicles is not possible. In Khartoum, 20 years ago, 40,000 minibuses were available for the population. In 2014, even though the population had increased substantially, only 12,000 minibuses remained in operation because of the lack of spare parts. The situation for tractors and pumps in the agricultural sector is similar. In fact, the general situation has been further compounded by the *freeze* on financial transfers, which has deterred foreign investment and neutralized all benefits of humanitarian exemptions. Payments cannot be made for supplies of authorized vital drugs because of foreign restrictions on currency transfers from the Sudan. After the Sudan lost a large share of oil fields when South Sudan seceded, restrictions on technical assistance and transfers further reduced oil extraction from 30 per cent of total capacity to 10 per cent. In addition, the Sudan has been unable to extract 66 per cent of new oil wells discovered for the same reasons. Given that 70 per cent of oil is used for the production of gasoline, the sanctions have had an impact on people using this fuel for transport and for other purposes.

42. The right to drinking water has been undermined. Basic water needs in the capital cannot be met owing to the breakdown of pumps drawing water from boreholes and from the Nile, and because the chemicals needed to purify water stocks are not available.

43. The right to work has been undermined by slowdowns in the productive sectors because of lack of spare parts and maintenance.

44. The right to development has also been gravely undermined. The implementation of a project for a vital coal-fired power generator with a total output of 600 megawatts for a total value of $850 million in Port Sudan is in jeopardy, which could lead to an even more acute shortfall in electricity. Little more than 34 per cent of homes benefit from access to electricity; the rate of connection to power, which increased by 22 per cent at the turn of the century, has now dropped to 5 per cent owing to lack of access to equipment, technical assistance and spare parts. Similarly, the train network, of which approximately 70 per cent of locomotives were manufactured by General Motors and General Electric, has ground to a halt because of lack of spare parts and technical assistance. Disadvantaged populations in

remote areas are thus further isolated, while the price of basic supplies, whether they be food or cement, rises. Such a situation contributes to regional tensions that current efforts are aimed at reducing. Air transport has not been spared by the embargo: the 10 aircraft of Sudan Airways, a model airline in the past, have been grounded.

45. The right to education is also in jeopardy owing to the rise in poverty, which in 2009 had reached 46 per cent of the population — largely due to the embargo on the country. The Special Rapporteur was informed that contributing factors to this situation were, first, the war in some regions; second, the lack of affordable social protection; and, failing infrastructure; and third, the loss of employment opportunities resulting from unilateral coercive measures. School drop-out rates of children up until the age of 12 years are the highest in the Arab region (between 36.5 per cent and 50.1 per cent, depending on the age subcategory) totalling in 2010 more than 3 million children.[30]

46. In university education, the freezing of exchanges and the lack of access to the range of software and modern technologies, and to participate in training abroad or even in exchanges via the Internet and subscription to scientific magazines, deprive the youth of Sudanese of the opportunity of understanding Western culture and values. The ensuing hostility will give young people in the Sudan the impression that an entire generation of innocent people is being victimized for no fault of their own.

47. The rights of the elderly are affected because of the ban on the transfer of remittances from members of their families living abroad.

48. The rights of persons with disabilities have also been affected by the substantial increase in the price of indispensable equipment, such as wheelchairs, owing to the need to circumvent restrictions by resorting to a number of intermediaries to procure said equipment.

49. Women's rights are affected in several fields, as seen in the increase in deaths of women during childbirth due to the lack of essential medical supplies.

50. The rights of the child are affected because of the lack of essential equipment, for example, incubators for premature infants.

51. The right to food has been affected by the reduction in agricultural production and productivity and in animal resources as a result of the embargo on imported production requirements. The negative impact is particularly evident in the derelict state of pumps and tractors used in farming, and the locomotives running on the rail network connecting the area to the rest of the Sudan. The situation is particularly regrettable, given that the El Gezira project could make the region the breadbasket for the whole country, and potentially for the whole of East Africa. The right to food has also been gravely undermined in the case of the food-processing plants in Kassala (a city hosting large numbers of destitute refugees, in particular from Eritrea), forced to close down because of the lack of imported spare parts. The lack of access to vaccines and drugs for livestock has also gravely affected the income of herders and other rural folk, who represent 40 per cent of the Sudanese population. The right to food of the inhabitants of the Sudan and of neighbouring States relying on Sudanese livestock has thus been undermined. In the light of these circumstances, it is regrettable that that the Sudan was not allowed to participate in the second phase of the N2Africa project, financed by the Bill and Melinda Gates Foundation and implemented by the Wageningen Institute and the International Livestock Research Institute. The project is aimed at empowering smallholder farmers and nomadic herders by supplying them with appropriate

[30] Sudan Ministry of Education, *Sudan Country Report on Out-of-School Children* (Khartoum, UNICEF, October 2014).

[31] See www.n2africa.org.

fertilizers and animal vaccines. It would have been ideal for enhancing the right to food in the Sudan, to address the malnutrition and undernutrition that have spread throughout the country.

52. In the Sudan, the poorest and most vulnerable, including women and children, have been the (unintended) casualties of unilateral coercive measures; senior officials have, by their own admission, not been affected to any serious extent. The measures are thus having an impact on the implementation of article 25, paragraph 1 of the Universal Declaration of Human Rights, and of articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights.

53. The Committee on Economic, Social and Cultural Rights, in its general comment No. 8 (1997), concluded that human rights must be taken fully into account when designing an appropriate sanctions regime, that effective monitoring should be undertaken throughout the period that sanctions are in force, and that the external entity imposing the sanctions has an obligation to take steps, individually and through international assistance and cooperation, especially economic and technical, to respond to any disproportionate suffering experienced by vulnerable groups in the targeted country.

54. Any global assessment of the situation of human rights in the Sudan should be based on a two-track approach, focusing on both internal and external causes. In that regard, the Special Rapporteur makes the recommendations below.

IV. Recommendations

A. Government of the Sudan

55. The Special Rapporteur recommends that the Government of the Sudan adopt a road map to address the recommendations made by the Independent Expert on the situation of human rights in the Sudan included in his report submitted to the Human Rights Council in 2015 (A/HRC/30/60).

56. In order for the unilateral coercive measures targeting the Sudan to be lifted durably and to unleash the creative human capacities that abound in the country, it is necessary that all Sudanese leaders agree to speak with one voice at the regional and international levels. This goal is feasible; for it to be attained, the national dialogue initiated by the Government must be pursued, in accordance with the decision made by the Peace and Security Council of the African Union, at its 539th meeting, on the activities of the High-level Implementation Panel for Sudan and South Sudan, and expanded to encompass all active Sudanese political parties and movements, without exception.

57. Taking into consideration the seriousness of the impact, whether de jure or de facto, of unilateral coercive measures on the life of innocent parties (given the lack of access to life-saving drugs or procurement of spare parts for chemotherapeutic cancer treatment), the Special Rapporteur recommends that the Sudan grant access to a team of medical experts to review the situation and to propose life-saving measures that could be taken immediately (see para. 66 below).

B. Source country

58. The unilateral coercive measures targeting the Sudan should be limited in time, and be phased out in accordance with the fulfilment by the Sudan of clear objectives,

on the basis of the assessment of an appropriate mechanism similar to that of the panel of experts set up pursuant to Security Council resolutions on the Sudan to make proposals. The fact-finding mission conducted by a four-member delegation from the Congress of the United States led by Bennie Thompson in November 2015 to assess the impact of sanctions called for such a follow-up.

59. The Special Rapporteur recommends that the source country consider whether the Power Africa initiative could also include the Sudan in its scope, as it does for neighbouring Ethiopia.

60. The Special Rapporteur also recommends that exceptions or waivers approved by the source country with regard to the trade in gum arabic, agricultural produce and certain life-saving drugs, as well as for limited access to software, be fully activated. Such a measure might also be accompanied by the lifting of restrictions on the shipping of these goods and related financial transfers.

61. The Special Rapporteur further recommends that the source country consider increasing the number of exceptions to the list of banned products, for example, to include those that help to safeguard the basic rights of citizens, including the full and unabridged right to health and rights in other crucial sectors, such as agriculture, education and information technology.

62. The ban on the transfer of remittances by Sudanese residents abroad to their families in the Sudan, and on transfers by Sudanese residents to family members pursuing their education abroad should be lifted. Such a measure would be consistent with the support of the source country for the decision of the Financial Action Task Force to remove the Sudan from its watch list, and could also lead to the removal of the Sudan from the list of State sponsors of terrorism, to which it was added 23 years ago under very different circumstances.

63. Furthermore, restrictions could be progressively lifted on transfers for commercial transactions, starting with imports recognized to be crucial to ensure basic human rights.

64. The Special Rapporteur recommends that the source country consider the possibility of lifting the unilateral coercive measures taken by Executive Order, then those adopted by the legislative body.

C. United Nations system

65. The Office of the United Nations High Commissioner for Human Rights (OHCHR) should send, in consultation with WHO and the United Nations Children's Fund (UNICEF), a team of specialists comprising an oncologist, a paediatrician and an immunologist to verify the information provided by the Special Rapporteur in the present report on the devastating impact of unilateral coercive measures on health services in the Sudan. The team could in particular confirm the impact of the measures as witnessed in the rise of the death toll of cancer patients as a result of the lack of access to spare parts for the cancer detection and treatment equipment, in infant and maternal deaths as a result of lack of medication for childbearing mothers, of treatment for premature children, and of detection facilities for dangerous pandemics. The team could estimate the number of lives that could be saved by ensuring the possibility to buy, ship and pay for the supplies of key medication and spare parts related to the said areas of concern. While the goods concerned may be included in the "exceptions" list, their shipping and payment remains problematic. The Special Rapporteur calls upon OHCHR to support his recommendation that the

United Nations Development Programme be responsible for procurement of these goods paid by national funding.

66. OHCHR, assisted by the United Nations Educational, Scientific and Cultural Organization and UNICEF, should undertake a study on the dysfunctions in the educational areas in the Sudan that have had an adverse impact on the right to education and may have causes related to unilateral coercive measures, as well as internal causes. The drafting of a study on internal causes is within the mandate of the Independent Expert on the situation of human rights in the Sudan.

67. The Special Rapporteur welcomes the procurement support agreement entered into by the Government of the Sudan and the United Nations Development Programme in March 2016, under which the latter is to facilitate access to medicines by Sudanese patients by overcoming current banking-related obstacles, with a view to ensuring the channelling and payment of essential medical supplies, the capacity to fight pandemics, and the availability of spare parts for vital equipment. The Special Rapporteur is of the view that the scope of this procurement system could be progressively broadened to include other supplies authorized by United States waivers and other goods as progress is made in settling outstanding issues.

68. The Special Rapporteur also recommends that the United Nations system launch a technical cooperation initiative under OHCHR and other relevant bodies of the United Nations operating in the Sudan to develop parameters to facilitate the assessment of the separate role of unilateral coercive measures and their impact on the enjoyment of human rights, including cases where multiple causes are involved. The initiative could lead to the holding by the United Nations of an expert meeting to prepare a case study, which could be helpful in developing a methodology on impact assessment in other targeted countries.

D. Other stakeholders and the international community

69. The experience in the Sudan proves that the adverse human rights impact of unilateral coercive measures on the poorer and most vulnerable segments of the population is greater than intended by the source country, since many of the latter's humanitarian waivers remain partly ineffective because of upstream or downstream implementation hurdles or because of over-compliance by international financial institutions fearful of being exposed to major fines, as was the case for some European banks with business relations with the Sudan.

70. The Special Rapporteur recommends that an international conference be organized in Basel, Switzerland, through consultations between the Bank for International Settlements, involving also SWIFT in Belgium, and all key international banks and shipping lines interested in business relations with the Sudan, and with the Office of Foreign Assets Control of the Department of the Treasury of the United States as an observer and the involvement of the Sudanese American Business Council. The purpose of this gathering would be to investigate the full potential of the waivers and how to make them effective, as well as address the over-compliance that has unintentionally become a brake on relations between the Sudan and the outside world.

71. The Special Rapporteur recommends that other stakeholders and the international community consider the possibility of engaging international mechanisms to restructure the external debt of the Sudan, which has become unsustainable. Restructuring could even come in the form of reparations for the damage caused by unilateral coercive measures to the enjoyment by ordinary people

of their basic human rights for more than two decades, indeed, compensation for the losses caused would surely exceed the State's external debt. In this context, internal action should be taken by the target country to enhance the coordination of efforts with South Soudan, in accordance with the decision made by the Peace and Security Council of the African Union, at its 539th meeting, in which the Council recalled the support expressed by the Assembly of the Union and the endorsement by the Council of the joint approach by the Sudan, South Sudan and the High-level Implementation Panel for comprehensive debt relief, the lifting of sanctions targeting the Sudan and development support for South Sudan.

72. Experience shows that unilateral coercive measures are politically easy to impose but much harder to lift. When imposed, these measures take on a life of their own, becoming embroiled in partisan politics in the source country. In the target country, the measures promote the development of a shadow economy that thrives on smuggling, money-laundering and various forms of trafficking, all of which create a new elite intent only on perpetuating the status quo.

73. Unilateral coercive measures also tend to become disconnected from the reality that they were originally supposed to address. They become ineffective in promoting policy change aimed at strengthening human rights; in fact, they ultimately have a high cost for and the adverse impact on the enjoyment of those same human rights. In this regard, the imposition of unilateral coercive measures is ultimately a self-defeating exercise. The situation prevailing in the Sudan today is no exception.

74. The Special Rapporteur is of the opinion that there must be a better way to promote the proclaimed objective of the both the source country and the target country: the enhancement of human rights in the Sudan. Because shortcomings in this important area can be attributed to both internal causes (issues of governance) and to external ones (unilateral coercive measures), the Special Rapporteur suggests that priority be given to quiet diplomacy involving the representatives of the source and target countries, the Independent Expert on the situation of human rights in the Sudan and the Special Rapporteur on the adverse impact of unilateral coercive measures on the enjoyment of human rights, to serve as an informal testing ground to address the recommendations made above. The Special Rapporteur stands ready to assist as a facilitator in confidence-building between source and target countries, suggesting options that could broaden the area of consensus between them.